



**Munoru v Equity Bank Limited & another (Civil Appeal 59 of 2020)
[2024] KEHC 11470 (KLR) (26 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11470 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL 59 OF 2020
EM MURIITHI, J
SEPTEMBER 26, 2024**

BETWEEN

STEPHEN KIREMA MUNORU APPLICANT

AND

EQUITY BANK LIMITED 1ST RESPONDENT

**CREDIT REFERENCE BUREAU AFRICA LTD T/A TRANSUNION 2ND
RESPONDENT**

RULING

1. By a Notice of Motion under certificate of urgency dated 21/3/2024, brought under Article 159(2) (d) of the Constitution, Section 7 of the Appellate Jurisdiction Act and all other enabling provisions of the law, the Applicant seeks that:
 1. Spent
 2. The Honourable Court do extend time to the Applicant for lodging Notice of Appeal from the judgment by Hon. E. Muriithi dated 28th November, 2023.
 3. The Applicant be allowed to file the Notice of Appeal within 14 days of the Order of court or any other period as the court may direct.
 4. The Honourable Court be pleased to issue any other orders in the interest of justice.
 5. Costs of this application be provided for.
2. The grounds upon which the application is premised are set out in the body of the application and supporting affidavit of Stephen Kirema Munoru, the Applicant herein sworn on even date. He avers that he is desirous of appealing against the judgment of this court of 28/11/2023 to the Court of Appeal, but the time for doing so has since lapsed. He verily believes that he has an arguable appeal



with probability of success and his advocate on record has already requested for certified copies of the judgment, proceedings and decree. The application has been brought without unreasonable delay and the Respondents will not be prejudiced in any way if the same is allowed. The delay in lodging the Notice of Appeal in time was caused by the inaction on the part of his former advocate and he is willing to comply with the directions of this court.

3. The 1st Respondent opposed the application vide grounds of opposition dated 22/6/2024 that;
 1. The application is incompetent and manifestly an abuse of the court process for:
 - a. For invoking the provision of the Appellate jurisdiction which is inapplicable in this court.
 - b. The application has no foundation to stand on.
 2. That the application has been brought after inordinate delay, which is not excusable and has not been explained.
 3. The Decree of the lower court was settled by the 1st Respondent and there is nothing remaining on it. Litigation must come to an end.
 4. The applicant has not come to court with clean hands and is not acting in good faith.
 5. The discretion of the court cannot be sought to be exercised where the wrong provisions of the law has been invoked and important steps not followed. This application is meant to mislead the court and is an abuse of the court process.
 6. That the intended appeal has no substance.
 7. The application is an afterthought.
 8. No prejudice will be occasioned to the Appellant if the orders sought are not granted.

Submissions

4. The Applicant urges that he was decisive in that when efforts to see his erstwhile counsel were not forthcoming, he instructed his current counsel on record to move the wheels that had come to a standstill. He urges that he has satisfactorily explained the delay, which was not a mistake of his own, but that of his erstwhile counsel, and cites *Sokoro Savings and Credit Co-operative Society Ltd v Mwamburi* (Civil Application E032 of 2022) [2023] KECA 381 (KLR) (31 March 2023) (Ruling). According to him, the fact that the 1st Respondent may have complied with the trial court's decree does not preclude him from appealing against other aspects of the impugned judgment, which is his right under the law.
5. The 1st Respondent urges that this application was filed on 21/3/2024 which is approximately 4 months since the impugned judgment was rendered, and thus the delay is inexcusable. It urges the court to find that the unreasonable delay has not been explained, and therefore the Applicant is guilty of laches, and cites *Diamond Trust Bank (K) Limited v Galaxy Ventures (K) Limited* [2020] eKLR and *Mwangi S. Kimenyi v Attorney General & Another* (2014) eKLR. It urges that the appeal is frivolous with absolutely no chances of success, and cites *Kenya Power & Lighting Company v Esther Wanjiru Wokabi* (2014) eKLR. It urges the court to dismiss the application with costs as the Applicant will not be prejudiced or suffer any injustice since he has already received the decretal sum.
6. The 2nd Respondent did not file any submissions.



Analysis and Determination

7. The singular issue for determination is whether leave to appeal out of time should be issued.
8. Section 7 of the *Appellate Court Act* expressly grants the High Court power to extend time as follows:

“The High Court may extend the time for giving notice of intention to appeal from a judgment of the High Court or for making an application for leave to appeal or for a certificate that the case is fit for appeal, notwithstanding that the time for giving such notice or making such appeal may have already expired:

Provided that in the case of a sentence of death no extension of time shall be granted after the issue of the warrant for the execution of that sentence.”
9. Nonetheless, leave to appeal should only be granted where there is a serious grievance to be escalated to the Appellate Court.
10. As counseled by the Court of Appeal in *Rhoda Wairimu Karanja & Another v Mary Wangui Karanja & Another* (2014) eKLR;

“...An appeal will lie to the Court of Appeal from the decision of the High Court exercising original jurisdiction with leave of the High Court or where the application for leave is refused, with leave of this court. Leave to appeal will normally be granted where prima facie it appears that there are grounds which merits serious consideration. We think this is good practice that ought to be retained in order to promote finality and expedition in the determination of probate and administration disputes.”
11. The impugned judgment was rendered on 28/11/2023 while the instant application was filed on 4/4/2024. This court finds that delay of approximately 4 months to be inordinate but excusable, as the same has been attributed to inefficiencies on the part of the Applicant’s erstwhile counsel.
12. This court has looked at the draft Memorandum of Appeal attached to the application and, with respect, it takes the view that the Applicant has demonstrated prima facie a serious question, to be put for determination by the Court of Appeal. The court notes that the serious question to be put before the Court of Appeal, or arguable case as it is sometimes called, need not be one that must eventually succeed.
13. Order 50 Rule 6 of the *Civil Procedure Rules* provides for power to enlarge time as follows:

“Where a limited time has been fixed for doing any act or taking any proceedings under these Rules, or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed:

Provided that the costs of any application to extend such time and of any order made thereon shall be borne by the parties making such application, unless the court orders otherwise.”



14. The appeal to the Court of Appeal ought to have been filed by a Notice of Appeal within fourteen (14) days in terms of Rule 75 (2) of the *Court of Appeal Rules* as follows:
- “(1) Any person who desires to appeal to the Court shall give notice in writing, which shall be lodged in duplicate with the registrar of the superior court.
- (2) Every such notice shall, subject to rules 84 and 97, be so lodged within fourteen days of the date of the decision against which it is desired to appeal.”
15. On the test in *Karanja v. Karanja*, supra, the court does grant leave to appeal.
16. It is contended that the Applicant will not suffer any prejudice if the application is dismissed because the decretal sum had already been settled, a fact duly acknowledged by the Applicant. The Applicant hastily rejoins that his undoubted right to appeal should not be impeded by payment of the decretal sum, because there are other aspects of the impugned judgment he wishes to be addressed by the Court of Appeal.
17. In this respect, this court finds that the settlement done by the 1st Respondent was a natural consequence of the outcome of the judgement and it cannot be used as a basis to deprive a litigant who is dissatisfied with a decision from accessing justice. Indeed, that would not reflect the tenets of the constitutional principle of access to justice. This court finds that the door to file an appeal is invariably open to all, and if a successful litigant feels that the award given is inadequate to fully compensate him of the loss suffered or injuries sustained, he should not be denied the opportunity to appeal just because it appears that he got some sort of relief.
18. The Applicant will, however, in terms of Order 50 Rule 6 of the *Civil Procedure Rules* be mulcted in costs.

Orders

19. Accordingly, for the reasons set out above, the Applicant’s application dated 21/3/2024 is allowed in following terms:
1. The Applicant is granted leave to appeal out of time to the Court to Appeal from the judgment of the court herein dated 28th November 2023.
 2. The Applicant shall file and serve the Notice of Appeal within the next seven (7) days.
 3. The Applicant shall file the Record of Appeal within sixty (60) days.
 4. In the event of default of the terms in orders (2) and (3) above, the leave to appeal herein granted shall lapse and be of no effect.
 5. The Applicant shall pay to the 1st Respondent the costs of this application to be agreed or taxed in default of agreement.

Order accordingly.

DATED AND DELIVERED THIS 26TH DAY OF SEPTEMBER, 2024.

EDWARD M. MURIITHI

JUDGE

APPEARANCES:



Mr. Maheli for Appellant.

Ms. Wangari for Mr. Mahinda for 1st Respondent.

N/A for the 2nd Respondent.

