



REPUBLIC OF KENYA



**KENYA LAW**  
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**Maluki & another v Kalolo & 2 others (Civil Appeal 333 of 2022)  
[2023] KEHC 27402 (KLR) (30 November 2023) (Ruling)**

Neutral citation: [2023] KEHC 27402 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CIVIL APPEAL 333 OF 2022  
DO CHEPKWONY, J  
NOVEMBER 30, 2023**

**BETWEEN**

**PETER MALUKI ..... 1<sup>ST</sup> APPLICANT**

**MARY NJERI ..... 2<sup>ND</sup> APPLICANT**

**AND**

**GEOFFREY KALOLO ..... 1<sup>ST</sup> RESPONDENT**

**VIRGINIA MUKAMI WAWERU ..... 2<sup>ND</sup> RESPONDENT**

**MOGO AUTO LIMITED ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The court has been called to determine Notice of Motion Application dated 29<sup>th</sup> November, 2022 which seeks the following orders:
  - a. Spent;
  - b. The time within which the Appeal from the Judgment of the Senior Principal Magistrate Court in Ruiru in Civil Case No. E463 of 2021 ought to have been lodged be enlarged upon terms which the Honourable Court may deem fit and just in grant in the circumstances.
  - c. That the Draft Memorandum of Appeal be admitted by the court subject to the payment of court fees.
  - d. That the costs of the application be in the cause.
2. The Application is based on the grounds as set out on the face of it and the Supporting Affidavit of Peter Maluki Kingatua on 29<sup>th</sup> November, 2022, wherein the Applicants have stated that they were unable to procure the lower court's proceedings and judgment within reasonable time to enable them lodge an Appeal within 30days. That they only managed to get them on 28<sup>th</sup> November, 2022 after



the time had lapsed. According to the Applicants, arguments, the appeal raises serious issues and urge the court to allow their application.

3. In response to the application, the Respondents filed Grounds of Objection to the application dated 17<sup>th</sup> April, 2023 stating that it is an abuse of the court process. They argue that the copy of the trial court judgment was availed immediately and the uncertified copy of the same was sufficient to prepare Memorandum of Appeal. They further hold that the Applicants do not require the typed proceedings to file an Appeal in the matter and therefore hold that the Applicants have not demonstrated sufficient reasons for not filing the Appeal within the prescribed timelines.
4. The court directed the parties to file written submissions and the Applicants' submissions are dated 21<sup>st</sup> July, 2023 while the Respondents' submissions were dated 30<sup>th</sup> June, 2023.

### **Analysis and Determination**

5. Having read through the pleadings and all other documents filed by the parties in respect of the application alongside their respective written submission, the court finds the main issue for determination being whether or not the application has merit to warrant the orders being sought thereof.
6. The law on Appeals as enshrined under Section 79G of the *Civil Procedure Act* is that Appeals should be lodged within 30 days from the date of the Decree and which timeline can be extended if there are good and sufficient reasons. The said Section 79G of the *Act* states that:-

“Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order

Provided that an appeal may be admitted out of time if the Appellant satisfies the court that he had a good and sufficient cause for not filing the appeal in time.”[Emphasis added].

7. For the court to consider whether or not to extend the timeline for filing of the Appeal several factors must be satisfied. These factors were explained by the Court of Appeal in the case of *Edith Gichungu Koine –vs- Stephen Njagi Thoitthi* [2014]eKLR as follows:-

“Nevertheless, it ought to be guided by consideration of factors stated in many previous decisions of this court including, but no limited to, the period of delay, the reasons for the delay, the degree of prejudice to Respondent if the application is granted, and whether the matter raises issues of public importance, amongst others.”

8. In this present case, a perusal of the record shows that the Judgment of the trial court was delivered on 8<sup>th</sup> September, 2022 and the Memorandum of Appeal filed on 22<sup>nd</sup> December, 2022 which is close to 104 days later. The Applicants' reasons for the delay was that they were unable to obtain a copy of the judgment and proceedings from the trial court time so that they and file the Appeal. This has been rebutted by the Respondent on the ground that it is not a requirement that a party should obtain typed proceedings for them to file an appeal.
9. In considering these arguments by the parties herein, the court agrees that indeed the applicants did not require typed proceedings for them to file the Appeal. Further, the Applicants have not filed any letter from the court to demonstrate the efforts they made to request for a copy of the Judgment or



the proceedings from the trial court from the time the judgment was delivered to the time of obtaining the same.

10. In view of the above observed, the court finds that the Applicants have not given sufficient reasons why the Appeal was not lodged in time or the efforts it made to obtain a copy of the Judgment or the proceedings filed. Therefore, the court finds that the application herein lacks merit and the same is dismissed. The upshot is that the Appeal herein is dismissed.

It is so ordered.

**RULING DELIVERED, DATED AND SIGNED AT KIAMBU THIS 30<sup>TH</sup> DAY OF NOVEMBER, 2023.**

**D. O. CHEPKWONY**

**JUDGE**

In the presence of:

No appearance for and by appellant

M/S Chepkorir counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondent

Court Assistant - Martin

