



**Kimitei v Sawe (Environment and Land Appeal E004 of 2022)
[2023] KEELC 17453 (KLR) (18 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17453 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND APPEAL E004 OF 2022**

EO OBAGA, J

MAY 18, 2023

BETWEEN

JOSEPHAT KOSGEI KIMITEI APPELLANT

AND

PATRICIA SAWE RESPONDENT

RULING

1. This is a ruling in respect of a notice of motion dated January 30, 2023 in which the Applicant seeks extension of time to appeal against this Court’s judgement which was delivered on November 10, 2022. The Applicant contends that she applied for typed proceedings on November 22, 2022 which request prompted the file to be taken to the typing pool.
2. The Applicant tried to lodge a notice of appeal on November 23, 2022 but the file could not be traced at the registry. The week that followed had little activity going on as staff of the Environment & Land Court had gone to Kilifi leaving behind one staff from the Employment & Labour Relations Court who was only dealing with matters under certificate of urgency.
3. The Applicant contends that the Notice of Appeal was assessed on August 12, 2022 and by that time, notice for lodging the notice of appeal had lapsed. It is on this basis that the Applicant seeks for extension of time to lodge an appeal out of time.
4. The Respondent opposed the Applicant’s application based on a replying affidavit sworn on March 13, 2022. The Respondent contends that the Applicant has not explained the reason for the delay to the satisfaction of the court and that she will not suffer any prejudice as she will be heard in the reinstated suit.
5. The parties herein opted to proceed with the application by way of written submissions. The Applicant filed her submissions on March 13, 2023. The Respondent filed his submissions on March 22, 2023.



I have carefully considered the Applicant's application as well as the opposition to the same by the Respondent. I have also considered the submissions by the parties.

6. There is only one issue for determination. This is whether the Applicant has met the threshold for grant of an order for extension of time to file an appeal out of time. In the case of *Mombasa County Government – Vs- Kenya Ferry Services & 2 others (2019) eKLR*, the Supreme Court stated as follows: -

' Concerning extension of time, this court has already set the guiding principles in the Nick Salat case as follows: -

'it is clear that the discretion to extend time is indeed unfettered.

It is incumbent upon the Applicant to explain the reasons for delay in making the application for extension and whether there are any extenuating circumstances that can enable the court to exercise its discretion in favour of the applicant. We derive the following as the underlying principles that a court should consider in exercising such discretion: -

- i. Extension of time is not a right of any party. It is an equitable remedy that is only available to a deserving party at the discretion of the court;
- ii. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
- iii. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case by case basis;
- iv. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
- v. Whether there will be any prejudice suffered by the Respondent if the extension is granted;
- vi. Whether the application has been brought without undue delay, and,
- vii. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.'

7. In *Abdul Azis Ngama v Mungai Mathayo [1976] KLR 61* at page 62, the Court of Appeal stated as follows: -

' We would like to state once again that discretion to extend time under Rule 4 only comes into existence after 'sufficient reason' for extending time has been established and it is only then that other considerations such as the absence of any prejudice and the prospects or otherwise of succession in the appeal can be considered.'

8. In the instant case, judgement was delivered by this court on November 10, 2022. No notice of Appeal was lodged until November 22, 2022 when the Applicant applied for typed proceedings. The request was made two days to expiry of the period for lodging the Notice of Appeal. There is absolutely no reason given why the Applicant could not lodge Notice of Appeal between November 10, 2022 and November 22, 2022 when she applied for typed proceedings which necessitated the file to go to the typing pool.
9. Lodging of Notice of Appeal is not pegged on having proceedings typed. Proceedings are only required when lodging the appeal. I am not convinced by the reason for failure to lodge the Notice of Appeal in time. As per the Court of Appeal in Abdul Azis Ngama Case Supra I cannot move on to consider



other considerations as the Applicant has not convinced me why Notice of Appeal was not lodged in time. I therefore find no merit in this application which is dismissed with costs to the Respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 18TH DAY OF MAY, 2023.

E. O. OBAGA

JUDGE

In the virtual presence of;

Mr. Mathai for Appellant/Respondent

Court Assistant –Laban

E. O. OBAGA

JUDGE

18th MAY, 2023

