



REPUBLIC OF KENYA



KENYA LAW
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**Munene v Kimotho & 2 others (Miscellaneous Application
E169 of 2021) [2022] KEHC 11027 (KLR) (27 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 11027 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS APPLICATION E169 OF 2021
MM KASANGO, J
JULY 27, 2022**

BETWEEN

LUCY WANGUI MUNENE APPLICANT

AND

PETER NGUGI KIMOTHO 1ST RESPONDENT

ALLAN NGUGI KIMOTHO 2ND RESPONDENT

REGISTRAR OF LANDS THIKA 3RD RESPONDENT

RULING

1. The notice of motion application dated 13th July, 2021 seeks to invoke the provisions of Section 79G of the *Civil Procedure Act*. That Section is in the following terms:-

“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 good and sufficient cause for not filing the appeal in time.”

2. The application under consideration was filed by Lucy Wangui Munene (the applicant). The applicant seeks by that application leave to file an appeal from a subordinate court’s decision out of time; that is out of the 30 days period set out in section 79G above.



3. The Ruling which the applicant seeks to appeal was delivered on 2nd June, 2021. The applicant in support of that application deposed part as follows:-

“That I am advised by my advocates on record which advice I verily believe to be true that the statutory period requisite for filing an appeal has already lapsed hence necessitating filing this application.

That the delay in filing the appeal was not intentional as my advocates on record informed me in good time of the ruling vide letter dated 2nd June 2021.

That I had not made up my mind as to whether to file an appeal on the said ruling as this had been along litigious exhausting process that commenced way back in the year 2016.

4. The application is opposed by the respondents. The respondents by their replying affidavit depend that the applicant’s reason for failing to file the appeal out of time I evidence that the applicant does not take the court proceedings with seriousness. That the applicant’s application seeking to appeal out of time was prejudicial to the respondents and was leading respondents incurring costs.

Analysis

5. The principles to be considered by a court when faced with an application for leave to file an appeal out of time were considered in the Court of Appeal in case *Visbra Stone Supplies Company Limited v Rsr Stone (2006) Limited* (2020) eKLR thus:-

“The above principles were restated by the Supreme Court of Kenya (M.K. Ibrahim & S.c. Wanjala Scj) In *Nicholas Kiptoo Arap Korir Salat Versus Independent Electoral And Boundaries Commission & 7 Others* (*supra*) as follows:-

- “(1) Extension of time is not a right of a party. It is an deserving party at the discretion of the court.
- (2) A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court.
- (3) Whether the Court should exercise the discretion to extend time, is a consideration to be made on a case to case basis.
- (4) Whether there is reasonable reason for the delay. The delay should be explained to the satisfaction of the court.
- (5) Whether there will be any prejudice suffered by the respondent of the extension is granted.
- (6) Whether the application has been brought without undue delay; and
- (7) Whether uncertain cases, like election petition, public interests should be a consideration for extending time.”

6. The applicant from the reproduced depositions in her affidavit in support of the application obviously treats the granting of leave to file an appeal out of time as of rights. This is because the applicant stated she was informed of the Ruling she now seeks to appeal against, on the day it was delivered. She also confirms that she was advised by her advocate that she had an appeal that raises triable issues but she “had not made up” her mind whether to appeal or not. She waited until 2nd August, 2021 to file an



application for leave to file the appeal out of time. I will only respond to that by stating the applicant is not entitled as of right to obtain leave to file an appeal out of time.

7. The applicant had a burden to lay the basis for failing to file an appeal out of time. That burden was restated by the Supreme Court as reproduced above and is also stated in Section 79G of the [Civil Procedure Act](#) which section requires an applicant to satisfy the court he/she has sufficient cause for not filing an appeal out of time.
8. The applicant failed to satisfy the burden she bore. It was not sufficient cause to state that the applicant had not decided to file an appeal.
9. The notice of motion dated 13th July 2021 but filed in court on 2nd August, 2021 is without merit and is dismissed with costs.
10. This file is closed.

RULING DATED AND DELIVERED AT KIAMBU THIS 27TH JULY, 2022.

MARY KASANGO

JUDGE

In the presence of:-

Coram:

Court Assistant:- Mourice

For Applicant:- Ms. Mugo HB Karanja Kanyiri

For 2st & 2nd Respondent:- Mr. Karanja HB Mr. Githinji

Court

Ruling delivered virtually,

MARY KASANGO

JUDGE

