



**Musikoyo v Muchere (Environment and Land Miscellaneous Application
E013 of 2022) [2023] KEELC 17472 (KLR) (16 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17472 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E013 OF 2022
DO OHUNGO, J
MAY 16, 2023**

BETWEEN

JUSTUS W MUSIKOYO APPLICANT

AND

EDWARD MAKARI MUCHERE RESPONDENT

RULING

1. By Notice of Motion dated March 9, 2022, the applicant seeks the following orders:
 1. [Spent]
 2. That leave be granted to the applicant to file an appeal out of time against the judgment and decree of Hon W Cheruiyot, Senior Resident Magistrate, in Mumias SPM MCL& E Case No 44 of 2018 delivered on November 26, 2021.
 3. That the annexed draft memorandum of appeal be deemed duly filed upon payment of the requisite fees.
 4. That consequently, this court do grant stay of execution of the judgment delivered on November 26, 2021 pending the hearing and determination of the intended appeal.
 5. That the costs of this application be in the cause.
2. The application is supported by an affidavit sworn by the applicant who deposed that the trial court issued directions that judgment would be delivered on August 18, 2021, but judgment was not delivered on the said date and the court thereafter directed that judgment would be delivered on notice. That the court ultimately delivered judgment on November 26, 2021 without notifying the applicant or his advocate. He further deposed that he only learnt of the judgment sometime in January 2022 and that he has an arguable appeal.



3. The respondent opposed the application through a replying affidavit in which he deposed that contrary to the applicant's allegations, judgment was delivered through the virtual platform on November 26, 2021 in the presence of the applicant's advocate. That despite the applicant's allegations that he was not aware of the judgment until sometime in January 2022, he still made the present application about four months after his alleged discovery.
4. At the request of parties, an order was made that the application be canvassed through written submissions. The applicant never filed any submissions despite being given two opportunities to do so. The respondent filed submissions in which he urged the court to dismiss the application.
5. I have considered the application, the affidavits, and the submissions. The only issue for determination is whether the orders sought should issue.
6. The Supreme Court stated as follows in the case of in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR, regarding the principles applicable to an application for enlargement of time:

"This being the first case in which this Court is called upon to consider the principles for extension of time, we derive the following as the under-lying principles that a Court should consider in exercise of such discretion:

1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a 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 a 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 respondents if the extension is granted;
 6. Whether the application has been brought without undue delay; ..."
7. I now apply the above guidelines to the present application. In terms of Section 16A (1) of the *Environment and Land Court Act, 2011*, an appeal from the subordinate court to this court is to be filed within 30 days of delivery of the judgment or ruling. The subject judgment was delivered on November 26, 2021. Any appeal against it ought to have been filed by December 26, 2021. The present application was filed on April 4, 2022. There was thus a delay of about three and a half months. Pursuant to Section 16A (2) of the *Environment and Land Court Act, 2011*, the court has jurisdiction to admit an appeal out of time if the appellant satisfies the court that he had a good and sufficient cause for not filing it in time.
 8. The applicant attributes the delay to an alleged failure by the Subordinate Court to inform him nor his advocate of the judgment date. The respondent has stated on oath that the applicant's counsel was present when the judgment was delivered. The applicant has not offered anything to controvert the respondent's contention. Additionally, despite the applicant learning of the judgment in January 2022, it was not until April 4, 2022 that he filed the present application. He has not offered any explanation



for the delay after being aware of delivery of the judgment. Further, as noted earlier, the applicant failed to file any submissions in respect of the present application.

9. The reasons given for not filing the appeal on time are not satisfactory. The applicant has not laid a basis to warrant exercise of discretion in his favour. I find no merit in Notice of Motion dated March 9, 2022 and I therefore dismiss it with costs to the respondent.

DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 16TH DAY OF MAY 2023.

D. O. OHUNGO

JUDGE

Delivered in open court in the presence of:

No appearance for the applicant

The respondent present

Court Assistant: E. Juma

