



Muraguri & 5 others v Muriuki (Chairman) & another (Civil Miscellaneous Application E508 of 2020) [2022] KEHC 14128 (KLR) (Civ) (21 October 2022) (Ruling)

Neutral citation: [2022] KEHC 14128 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
CIVIL MISCELLANEOUS APPLICATION E508 OF 2020**

**JK SERGON, J
OCTOBER 21, 2022**

BETWEEN

**SYMON MAINA MURAGURI 1ST APPLICANT
JOSEPH MAINA WANJAU 2ND APPLICANT
JULIUS GATUNGA 3RD APPLICANT
JACKSON MWANGI JUMA 4TH APPLICANT
GEORGE MAINA KAMONDE 5TH APPLICANT
EPHANTUS MUCHINA MWANGI 6TH APPLICANT**

AND

**SAMSON MUREITHI MURIUKI (CHAIRMAN) 1ST RESPONDENT
KIBIRIGWI FARMERS CO-OPERATIVE SOCIETY 2ND RESPONDENT**

RULING

1. The application dated November 27, 2020 seeks orders that this honourable court be pleased to grant leave to the appellant to lodge and appeal against the ruling of the Co-operative Tribunal in CTC No 265 of 2019 out of time.
2. Secondly, the draft memorandum of appeal annexed to the application herein be deemed to be duly filed upon payment of the requisite fees.
3. The application is premised on the grounds set out therein and the affidavit sworn by the applicants. The delay in filing the appeal is blamed on the lock down that followed the outbreak of the COVID 19 Pandemic. It is further stated that the tribunal also failed to provide the certified copies of the



proceedings and ruling timeously. It is further stated that the intended appeal is arguable with reasonable prospects of success.

4. The application is opposed. It is stated in the replying affidavit that there is no reason given why the memorandum of appeal was not served in good time. that in any event what was dismissed was an application for summary judgment and that justice would be served during the full hearing of the case.
5. I have considered the application, the response thereof and the rival submissions filed.
6. On enlargement of time, the principles applicable were set out by the Supreme Court of Kenya in the *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR as follows:

“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; and
7. Whether in certain cases, like election petitions, public interest should be consideration for extending time.”

7. The ruling of the tribunal was delivered on April 9, 2020. The instant application was filed on November 27, 2020. The delay is inordinate but has been explained.
8. The applicants allege transgressors of the law by the tribunal when it failed to strike out the defence and counter-claim herein. Although the applicants have their undoubted right of appeal, it has not been shown what prejudice will be suffered if the case proceeds to a full hearing as ordered by the tribunal. The applicant will still have his day in court and if dissatisfied lodge an appeal. On the other hand, the case before the tribunal stands to be delayed further.
9. With the foregoing, I find no merits in the application and the same is hereby dismissed with costs.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 21ST DAY OF OCTOBER, 2022.

.....
J. K. SERGON

JUDGE



In the presence of:

..... for the 1st Applicant

..... for the 2nd Applicant

..... for the 3rd Applicant

..... for the 4th Applicant

..... for the 5th Applicant

..... for the 6th Applicant

..... for the 1st Respondent

..... for the 2nd Respondent

