



**Wabwire v Nation Media Group Limited & another (Miscellaneous Application E579 of 2021) [2022] KEHC 15714 (KLR) (Civ) (24 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 15714 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
MISCELLANEOUS APPLICATION E579 OF 2021  
JN MULWA, J  
NOVEMBER 24, 2022**

**BETWEEN**

**BENARD JOMO WABWIRE ..... APPLICANT**

**AND**

**NATION MEDIA GROUP LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before the court is a Notice of Motion dated 26<sup>th</sup> November 2021 premised on the provisions of Order 51 Rule 1 of the *Civil Procedure Rules* 2010, Section 3A of the *Civil Procedure Act* and Article 159 of *the Constitution* of Kenya, 2010. The Applicant seeks leave to file an appeal out of time against the ruling of Hon. L. L. Gicheha delivered on 23<sup>rd</sup> July 2021 in Milimani CMCC No. 4674 of 2011 - Benard Jomo Wabwire v Nation Media Group Limited and another. He also prays that the costs of the application be provided for.
2. The application is supported by the Applicant's affidavit sworn on 26<sup>th</sup> November 2021.
3. Both the 1<sup>st</sup> and 2<sup>nd</sup> Respondents responded to the application by way of Grounds of Opposition dated 16<sup>th</sup> February 2022 and 22<sup>nd</sup> February 2022 respectively.
4. The court has considered the Applicant's affidavit, the Respondents' respective Grounds of Opposition as well as the written submissions put in support and in opposition of the application. The only issue for determination is whether the Applicant has satisfied the court by the supporting affidavit and submissions that he had a good and sufficient cause for not filing the appeal within time.
5. It is the Applicant's submission that the delay is not inordinate. He cited several authorities for proposition that the amount of delay in this instance should not lead the court to disallow the



application as it is not excessive, but should consider the reasons given for the delay. These are: *Utalii Transport Company Limited & 3 Others v NIC Bank Limited & Another* [2014] eKLR; *Amal Hauliers Limited v Abdulnasir Abukar Hassan* [2017] eKLR; *AG v Law Society of Kenya & 5 others* [2018] eKLR; and *Syokimau Residents Association & 5 Others v Regina Mueni Kaloki & Another* [2021] eKLR.

6. Appeals from the subordinate court are supposed to be filed within 30 days from the date of the decision of the lower court although the said timeline is not cast on stone. Section 75G of the *Civil Procedure Act* provides thus:

“79G. 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.”

7. Section 95 of the *Civil Procedure Act* also donates to court the power to extend the period fixed for any action. It provides thus: -

“Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Act, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.”

8. In *Nicholas Kiptoo Korir Arap Salat v IEBC & 7 Others* [2014] eKLR, the Supreme Court set down the principles for extension of time as follows:

- “1. 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;
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 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 Respondent if the extension is granted;
6. Whether the application has been brought without undue delay.
7. ...”

9. The Court of Appeal also set down the principles to be considered in exercising the court’s discretion on whether or not to enlarge time to file appeal in the case of *Leo Sila Mutiso v Rose Hellen Wangeri Mwangi* Civil Application No. 255 of 1997. It held as follows:-

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general, the matters which this court takes into account in deciding whether to grant an extension of time are first, the



length of the delay. Secondly, the reason for the delay; thirdly (possibly) the chances of the appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the respondent if the application is granted.”

10. As regards the length and reason for delay, it is not disputed that the Ruling in the lower court was delivered on 23<sup>rd</sup> July 2021 and the instant application was filed four months later. The primary case that was dismissed, CMCC No. 4674 of 2011, was filed in 2011 and dismissed for want of prosecution in 2017 which constitutes six years without prosecution of the case. By a Notice of Motion dated 9<sup>th</sup> October 2020, the court found no merit thereof and refused to reinstate the case, holding that the Applicant was guilty of laches; and reinstating a case after eleven years would greatly prejudice the defendants as getting their material witnesses would not be easy. That was on 23<sup>rd</sup> of July 2021.
11. The above did not awaken the Applicant. He went back to sleep, only to file the instant application after another four months, a total of eight months after the case was reinstated. I agree with the Respondents that the Applicant has a history of sleeping on his rights as a litigant as rendered in the case *Syokimau Residents Association & 5 others (supra)*. Having considered that no plausible reasons have been advanced by the Applicant for the inordinate delay in the circumstances, I come to the conclusion that the Applicant is not deserving of the prayers he seeks.
12. Consequently, the application dated 26<sup>th</sup> November 2021 is hereby dismissed with costs to the Respondents.
- 13 Orders Accordingly.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 24<sup>TH</sup> DAY OF NOVEMBER 2022.**

**J.N. MULWA**

**JUDGE.**

