



Omwanda & another v Okongo (Environment and Land Miscellaneous Application E027 of 2022) [2023] KEELC 17935 (KLR) (13 June 2023) (Ruling)

Neutral citation: [2023] KEELC 17935 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E027 OF 2022
DO OHUNGO, J
JUNE 13, 2023**

BETWEEN

SELPHANO OSUNDWA OMWANDA 1ST APPLICANT

STELLA AGNES ATITI 2ND APPLICANT

AND

SAMUEL OTURI OKONGO RESPONDENT

RULING

1. By notice of motion dated September 6, 2022, the applicants seek extension of time within which to appeal against judgment delivered by the subordinate court on April 6, 2022 in Kakamega CM ELC number 06 of 2020. The application is supported by an affidavit sworn by the second appellant. She deposed that the applicants attended court on March 9, 2022 for scheduling of judgment date, but no date was given since the file was not available. That subsequently, no notice of delivery of judgment was given and that they only came to learn on May 6, 2022 that judgment was delivered on April 6, 2022. The applicants stated in the grounds on the face of the application that they filed an application dated May 12, 2022 but later withdrew it.
2. The respondent opposed the application through a replying affidavit in which he deposed that the intended appeal is not meritorious since the applicants did not file a defence and further that the application has been overtaken by events since the judgment is being complied with.
3. The applicants canvassed the application through written submissions while the respondent opted to rely entirely on the replying affidavit. The applicants argued that the application is meritorious and urged the court to allow it.
4. I have considered the application, the affidavits, and the submissions. The principles that guide the court while considering an application for extension of time are that such an order is discretionary, and the applicant has the burden of laying a basis to the satisfaction of the court. The court considers such



factors as whether there is a reasonable reason for the delay, whether there will be any prejudice suffered by the respondent if the extension is granted and whether the application has been brought without undue delay. See the decision of the Supreme Court in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR.

5. 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. 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.
6. The judgment sought to be appealed against was delivered on April 6, 2022 while the present application was filed on September 12, 2022. The respondent has not disputed that the applicants filed an application dated May 12, 2022 but later withdrew it. Equally, it is not disputed that there was confusion as to the date of delivery of the judgment.
7. I am persuaded that the applicants have laid a basis to warrant exercise of discretion in their favour. The respondent has not shown that any prejudice will be occasioned to him if the orders sought are granted. I find merit in notice of motion dated September 6, 2022 and I therefore make the following orders:
 - a. Time within which to appeal against the judgment delivered by the Subordinate Court on April 6, 2022 in Kakamega CM ELC number 06 of 2020 is hereby extended.
 - b. The applicants to file and serve the memorandum of appeal within 14 (fourteen) days from the date of delivery of this ruling. In default, notice of motion dated September 6, 2022 shall stand dismissed.
 - c. Costs shall be in the appeal.

DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 13TH DAY OF JUNE 2023.

D. O. OHUNGO

JUDGE

Delivered in open court in the presence of:

Mr Nyikuli holding brief for Mr Momanyi for the applicants

Mr Odhiambo B.F. for the respondents

Court Assistant: E. Juma

