



REPUBLIC OF KENYA



KENYA LAW
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Kamau v Deliverance Church Registered Trustees & another (Environment & Land Case 12 of 2011) [2023] KEELC 19212 (KLR) (27 July 2023) (Ruling)

Neutral citation: [2023] KEELC 19212 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 12 OF 2011**

**JE OMANGE, J
JULY 27, 2023**

BETWEEN

MARION WAKANYI KAMAU PLAINTIFF

AND

DELIVERANCE CHURCH REGISTERED TRUSTEES 1ST DEFENDANT

GEOFFREY KAMAU NJUGUNA 2ND DEFENDANT

RULING

1. The plaintiff's application dated 19th December, 2022 prays for the following orders;
 1. Spent.
 2. That this Honourable court be pleased to extend time limited for the plaintiff to file a notice of appeal against the judgment of this Honourable court (Honourable Lady Justice L. Komingoi) delivered on 24th November 2022.
 3. That consequent upon grant of prayer no 2, this Honourable Court be pleased to grant leave to the plaintiff to file and serve a notice of appeal within fourteen (14) days of the grant of the order for extension of time to file a notice of appeal.
2. The application is supported by the affidavit of Patrick Rugo Githinji in which he depones that parties were notified that Judgements that were pending before Hon Lady Justice Komingoi would be delivered on notice. He averred that he did not receive a notice but only got to learn after several inquiries that Judgement had been delivered on 24th November 2022. His efforts to trace the file and obtain the Judgement were not successful as the file had not been transferred from Kajiado where the Judgement was delivered. He therefore made the decision to seek extension of time to file the Notice of Appeal as the period for doing so had already lapsed. In a supplementary affidavit he states that he finally obtained the Judgement on 30th January 2023.



3. Counsel for the plaintiff filed submissions in which they reiterated the contents of the application and urged the court to allow the application for extension of time. Counsel for the Defendant on his part submitted that the court is functus and cannot hear this application and secondly that it is only the High Court that is vested with authority to extend time under the [Appellate Jurisdiction Act](#).
4. I have considered the submissions by both counsel, the authorities cited and the pleadings herein. The issues I have identified for determination are as follows; Whether the court is functus officio? Whether the court has jurisdiction to grant extension of time? Whether the application for extension of time is merited?

Whether the court is functus officio

5. It was submitted by counsel for the defendant that the court is functus. Counsel referred the court to the decision of Telkom Kenya Limited V John Ochanda (suing on his own behalf and on behalf of 996 former employees of Telkom Kenya) wherein it was stated;

Functus officio is an enduring principle of law that prevents the re-opening of a matter before a court that rendered the final decision thereon.
6. Counsel also referred the court to the case of Raila Odinga & 2 Others V Independent Electoral And Boundaries Commission & 3 Others [2013] eKLR, where the Supreme Court laid out the meaning of the term functus officio, cited with approval an excerpt from an article by Daniel Malan Pretorius entitled, “The Origins of the Functus Officio Doctrine, with Special Reference to its Application in Administrative Law” (2005) 122 SALJ 832 in which the learned author stated;

...“The functus officio doctrine is one of the mechanisms by means of which the law gives expression to the principle of finality. According to this doctrine, a person who is vested with adjudicative or decision making powers may, as a general rule, exercise those powers only once in relation to the same matter...The [principle] is that once such a decision has been given, it is (subject to any right of appeal to superior body or functionary) final and conclusive. Such a decision cannot be reviewed or varied by the decision maker.”
7. I have considered the cited authorities. The guiding principle is summed up in the Telkom Kenya case thus; “The doctrine is not to be understood to bar any engagement by a court with a case that it has already decided or pronounced itself on. What it does bar is a merit-based decisional re-engagement with the case once final judgment has been entered and a decree thereon issued. In my view hearing a post Judgement application such as this is not a decisional reengagement with a case. This is in line with exceptions outlined by the Supreme Court in the Raila Odinga Case supra.

Whether this court has jurisdiction under section 7 of the [Appellate Jurisdiction Act](#)
8. Counsel for the Defendant submits that in so far as Section 7 refers to the High Court, it excludes the two courts of equal status. Article 162 (b) of [the Constitution](#) establishes the two superior courts of equal status to the High Court. The Karissa Chengo case clearly demarcated the jurisdiction of the two courts vis a vis the High Court. Could [the Constitution](#) have created courts with the status of the High Court and failed to give it the necessary powers to exercise its jurisdiction? I think not. While it may be necessary in the fullness of time to amend the various statutes to reflect the post 2010 constitution realities, the purposive interpretation is that parliament and the people of Kenya intended that the equal status courts have the same powers as the High Court. As such I find that this court has jurisdiction to hear and determine the application for extension of time.



Whether the application for extension of time is merited

9. The Court of Appeal in the Case of Charles Karanja Kiiru Vs Charles Githinji Muigwa [2017]eKLR guided that whenever an application for extension of time is before a court, the court ought to take into account several factors as observed by Odek JJA in Edith Gichungu Koine Vs Stephen Njagi Thoithi [2014]eKLR thus:

“Nevertheless, it ought to be guided by consideration of factors stated in many previous decisions of this court including, but no limited to, the period of delay, the reasons for the delay, the degree of prejudice to Respondent if the application is granted, and whether the matter raises issues of public importance, amongst others.”

10. In the instant case I note that the reasons cited by the applicant for the delay are largely undisputed. In the absence of notice of delivery of the Judgement which were factors beyond the control of the plaintiff, I find that there is sufficient cause to extend the time for filing of the notice of appeal.

In the final result, the application is allowed as follows:-

- a. The plaintiff/ applicant is granted extension of time to file the notice of appeal.
- b. The Notice of appeal be filed within 14 days from today.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 27TH DAY OF JULY 2023.

JUDY OMANGE

JUDGE

In the presence of: -

Mr. Rugo for Plaintiff/Applicant

No appearance for the Defendant/Respondent

Steve - Court Assistant

