



**Okonyo v Mwambaka (Environment and Land Miscellaneous Application
41 of 2019) [2025] KEELC 1320 (KLR) (19 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1320 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 41 OF 2019
SM KIBUNJA, J
MARCH 19, 2025**

BETWEEN

THOMAS OKONYO APPLICANT

AND

BEATRICE MWAMBAKA RESPONDENT

RULING

1. The applicant filed the application dated 3rd march 2016 seeking for inter alia enlargement of time to allow him file an appeal from Mombasa Rent Restriction Tribunal Case No. 25 of 2015. The application is based on the eight (8) grounds on its face and supported by the affidavit of Thomas Okonyo, applicant, sworn on the 3rd March 2016, inter alia deposing that the tribunal suit was decided on 19th January 2016 directing that he vacates the subject matter premises; that his advocate applied for copies of proceedings and judgement but was yet to get it and time to file the appeal has lapsed; that the delay in filing the appeal was occasioned by the delay in communicating with his advocate and getting the copy of judgement; that the respondent will not be prejudiced if the application is allowed.
2. Through the replying affidavit of Beatrice Mwakamba, sworn on the 28th September 2023, the respondent opposed the application deposing inter alia that the applicant has not explained the delay in failing to file the appeal within the time stipulated under section 79G of the *Civil Procedure Act*; that the applicant has not met the threshold for extension of time to be granted; that the applicant has inordinately delayed in prosecuting the application and has not tendered any explanation; that as litigation must come to an end, allowing the application at this time will cause prejudice and cause great damage to her and the it should be dismissed with costs.
3. The court issued directions on filing and exchanging submissions on the 21st September 2023, 3rd July 2024 and 10th February 2025. The learned counsel for the applicant filed their submissions dated the 2nd July 2024, which the court has considered. The record confirms that the counsel for the respondent was served with submissions on 2nd July 2024, and despite being given time to file theirs none was filed.



4. The court has carefully considered the grounds on the application, affidavit evidence, submissions filed, the record and come to the following findings:
- a. That there is no dispute that the tribunal decision sought to be appealed was delivered on the 19th January 2016. This is also apparent on the face of the tribunal order attached at paragraph 5 of the applicant deposition.
 - b. That the instant application dated the 3rd March 2016 was evidently filed on the 7th March 2016, long after the time for filing an appeal had lapsed. That even though the period that had lapsed was according to the applicant's submissions 25 days, the applicant had an obligation to offer an explanation for the delay to the court. The applicant has blamed the delay in time it took to get the copies of proceedings and judgement from the court and in communicating with his counsel. The respondent has deposed that the applicant has not given any or sufficient explanation for the delay in filing the appeal in time.
 - c. That while the applicant has not given any further details about the cause of the delay in communicating with his advocate, I have perused the order attached to the supporting affidavit and it clearly show it was issued on the 22nd January 2016, which is three (3) days after the judgement was delivered. The other annexures to the supporting affidavit includes the letter dated 3rd March 2016 by Ms. C. K. Areba & Company Advocates to the Executive officer of the tribunal seeking to be furnished with copy of proceedings. There is no evidence tendered to show that the applicant had applied for proceedings before 3rd March 2016, when the letter to the executive office was made, and the claim that a request had been made during the delivery of the judgement has not been evinced. If indeed request for proceeding was made during the delivery of the judgement as deposed by the applicant, that would have been referred to in the letter of 3rd March 2016. I therefore agree with the respondent that the applicant has failed to tender sufficient explanation on why he did not file the appeal within time.
 - d. I have also perused the supporting affidavit by the applicant that was filed in support of the notice of motion and noted that though it has the signature presumably of the applicant it has not been commissioned before a commissioner of oaths as required under the Oaths and Statutory Declaration Act Chapter 15 of Laws of Kenya. Though the document is headed supporting affidavit, it is of no evidential value without being commissioned, and it leaves the application without evidence in support. I therefore agree with the respondent's deposition at paragraph 15 of the replying affidavit that the application is fatally defective, incompetent and a nullity ab initio.
 - e. That even if the application was competent, there is no suitable explanation tendered as to why the applicant, who had filed the notice of motion under certificate of urgency on 7th March 2016, took this long without prosecuting it. It is only after Ms. A. N. Atancha & Company Advocates, the current counsel, filed the notice of change of advocate thereby coming on record for the applicant on 2nd July 2024 that the prosecution of the application was pursued with commitment and I commend counsel. Nevertheless, the record shows the matter was filed as Mombasa HCCC MISC. APPL. No. 245 of 2016 before being transferred to this court on 14th October 2019, after which it was given the current reference. The delay in prosecuting the application renders credence to the respondent's contention that the application was an afterthought and an abuse of judicial process.



- f. That applicant having failed in the application, and as under section 27 of *Civil Procedure Act* chapter 21 of Laws of Kenya costs follow the event unless where otherwise directed by the court, he will pay the respondent's costs.
5. In view of the determinations set out above on the notice of motion dated the 3rd March 2016, the court finds and orders as follows:
- a. That the application is devoid of merit and is hereby dismissed.
- b. The applicant to pay the respondent's costs.

It is so ordered.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 19TH DAY OF MARCH 2025.

S. M. Kibunja, J.

ELC MOMBASA.

In The Presence Of:

Applicant: No Appearance

Respondent: Mr Omari.

Shitemi– Court Assistant.

S. M. KIBUNJA, J.

ELC MOMBASA.

