



Kiplagat v Chelimo & 6 others (Environment and Land Miscellaneous Application 60 of 2022) [2023] KEELC 20239 (KLR) (27 September 2023) (Ruling)

Neutral citation: [2023] KEELC 20239 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 60 OF 2022
JM ONYANGO, J
SEPTEMBER 27, 2023**

BETWEEN

HELLEN JEPKOSKEI KIPLAGAT APPLICANT

AND

PHILIP CHELIMO 1ST RESPONDENT

SHADRACK NKANAT 2ND RESPONDENT

ANDREW CHESAINA 3RD RESPONDENT

JAMES TOO 4TH RESPONDENT

DANIEL KETER 5TH RESPONDENT

SAMUEL KIPKEMBI CHEBON 6TH RESPONDENT

PHILEMON SAWE 7TH RESPONDENT

RULING

1. What is before me is the Applicant's Notice of Motion dated 17.11.2022 brought pursuant to sections 1A, 1B and 3A of the *Civil Procedure Act* and Rule 11(4) of the *Advocates Remuneration Order 2014* seeking the following orders:
 - a. That the Applicant be granted leave to file this reference out of time against the ruling of Honourable B.K Kiptoo Principal Magistrate delivered on 2nd September 2022.
 - b. That the leave granted above do operate as a stay of execution of the ruling of the taxing master aforesaid and any other consequential proceedings.
 - c. That this reference attached hereto be deemed as duly filed upon payment of the requisite fees.
 - d. That the costs hereof be provided for.



2. The application is premised on the grounds that the reasons for the ruling were not supplied to the applicant until 46 days after delivery of the ruling. The grounds are further elaborated in the supporting affidavit of Arthur Ingutia Advocate sworn on 17th November 2022 in which he deposes that he requested for the reasons for the ruling on 9th September 2022 but the same were forwarded to him on 24th October 2022.
3. In opposing the application, Volta Oribo, the Respondent’s counsel filed a Replying Affidavit sworn on 20th March 2023 in which he avers that Applicant intentionally failed to file a reference in time in compliance with the provisions of Rule 11(1) and (2) of the *Advocates Act*. He further deposes that the Applicant applied for the reasons after one month and after receiving them on 24th October 2022, he did not file the application until 17th November 2022.
4. The application was canvassed by way of written submissions and both parties filed their submissions which I have carefully considered.
5. The singular issue for determination is whether the Applicant should be granted leave to file the reference out of time.
6. The principles that should guide the court in granting an application for extension of time were laid down by the Supreme Court in the Case of *Nicholas Kiptoo Arap Salat & 7 others v Independent Electoral and Boundaries Commission* [2014] eKLR as follows:

“... It is clear that the discretion to extend time is indeed unfettered. It is incumbent upon the applicant to explain the reasons for delay in making the application for extension and whether there are any extenuating circumstances that can enable the Court to exercise its discretion in favour of the applicant.

“... we derive the following as the underlying principles that a Court should consider in exercising such discretion:

 - a. 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;
 - b. a party who seeks extension of time has the burden of laying a basis, to the satisfaction of the Court;
 - c. whether the Court should exercise the discretion to extend time, is a consideration to be made on a case- to- case basis;
 - d. where there is a reasonable [cause] for the delay, [the same should be expressed] to the satisfaction of the Court;
 - e. whether there will be any prejudice suffered by the respondents, if extension is granted;
 - f. whether the application has been brought without undue delay; and
 - g. whether in certain cases, like election petitions, public interest should be a consideration for extending time” [emphasis supplied]
7. In the present case the Applicant has demonstrated that even though he requested for the reasons for the ruling on 7th September 2022, the same were supplied 46 days later on 24th October 2022. Much as I agree with the Respondent’s counsel that the application was not filed immediately upon receipt



of the reasons, the greater delay was occasioned by the court. At any rate, the Respondent has not demonstrated what prejudice he would suffer if the extension is granted.

8. I am satisfied that the Applicant is deserving of the exercise of the court's discretion in his favour and in the interest of justice I allow the application and make the following orders:
- a. The Applicant is granted leave to file a reference out of time.
 - b. There shall be a stay of execution of the ruling of the taxing master together with any other consequential proceedings.
 - c. The reference attached hereto shall be deemed as duly filed upon payment of the requisite fees.
 - d. That the costs of this application shall be in the intended reference.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THE 27TH DAY OF SEPTEMBER, 2023

.....

J.M ONYANGO

JUDGE

In the presence of;

1. No appearance for the parties

Court Assistant: A. Oniala

