



REPUBLIC OF KENYA



**Kandie v Ondieki (Environment & Land Case 7 of 2017)
[2023] KEELC 19998 (KLR) (26 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 19998 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 7 OF 2017
JM ONYANGO, J
SEPTEMBER 26, 2023**

BETWEEN

JENNIFER KOBILO KANDIE APPLICANT

AND

JAMES ONDIEKI RESPONDENT

RULING

1. What is before me for determination is the plaintiff's application dated April 24, 2023 seeking the following orders:
 - a. That the firm of Limo R.K & Co Advocates be granted leave to come on record for an on behalf of the 5th and 9th defendants in place of Arap Mitey & Co Advocates.
 - b. That the honourable court be pleased to enlarge the time within which the plaintiff/applicant to file his Notice of Appeal against the judgment delivered on April 9, 2019 and upon such time being enlarged, the applicant be allowed to file the appeal herein out of time.
 - c. The costs of this application be provided for.
2. The application is premised on the grounds set out on the face of the application and the applicant's supporting affidavit sworn on April 24, 2023. In essence the Applicant contends that she was unrepresented at the time judgment was delivered and that judgment was delivered in her absence. She thereafter instructed the firm of M/s Arap Mitey to file an appeal on her behalf but she did not receive any updates until April 20, 2023 when she was served with a Notice to Show Cause. She thereupon instructed the firm of Limo R.K & Co Advocates and on perusal of the file they discovered that there was a vesting order and certificate of costs.



3. In opposing the application the respondent filed a replying affidavit sworn on June 2, 2023 in which he deponed that the Applicant is guilty of laches and that the suit property has already been transferred to the Respondent pursuant to a vesting order issued by the court.
4. The application was canvassed by way of written submissions and both parties filed their submissions which I have carefully considered.
5. The issues for determination are
 - i. Whether the firm of Limo R.K & Co Advocates should be granted leave to come on record for the Applicant.
 - ii. Whether the Applicant should be granted leave to file a Notice of Appeal out of time.

Analysis And Determination

6. The principles that guide the court in the exercise of its discretion to extend time for filing an appeal out of time were laid down by the Supreme Court in the case of [*Nicholas Kiptoo Arap Salat v IEBC & 7 others*](#) (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:...

1. 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;
 2. a party who seeks 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 on a case- to- case basis;
 4. where there is a reasonable [cause] for the delay, [the same should be expressed] to the satisfaction of the court;
 5. whether there will be any prejudice suffered by the respondents, if extension is granted;
 6. whether the application has been brought without undue delay; and
 7. 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 the judgment was delivered way back in April 2019. The applicant claims that in 2020 she instructed the firm of Arap Mitey to file a Notice of Appeal but he did not do so and she only learnt of this fact in April, 2023. In an application for extension of time the applicant must explain the delay in filing the appeal to the satisfaction of the court.



8. In the case of *Odera Obar & Co Advocates v Acquva Agencies Limited* (2021) eKLR where the court held as follows:

“The law does not set out any minimum or maximum period of delay. All it states is that the delay should be explained. A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons upon which discretion can be favourably exercisable”.

9. The applicant has placed the blame on her former advocate who did not move the court soon after he was instructed to file the appeal. However, she does not explain why it took her 3 years to check on the progress of her case. In the case of *Habo Agencies Limited v Wilfred Odhiambo Musingo* (2015) eKLR the Court of Appeal observed as follows:

“It is not enough for a party in litigation to simply blame the Advocates on record for all manner of transgressions in the conduct of the litigation. Courts have always emphasized that parties have a responsibility to show interest in and to follow up their cases even when they are represented by counsel”.

10. Applying by the above-mentioned principles in the Nick Salat Case to the instant case, I am not persuaded that the applicant has given a satisfactory explanation for the delay in filing the appeal on time. I am constrained to agree with counsel for the respondent that the applicant is guilty of laches.

11. Consequently, the application lacks merit and it is dismissed with costs to the respondent.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 26TH DAY OF SEPTEMBER, 2023

.....

J.M ONYANGO

JUDGE

In the presence of;

Mr. Kibii for the Applicant

Mr. Nyambegera for Mr. Kipkemboi for the Respondent

Court Assistant: A. Oniala

