



**Ngocho v Mogesi (Environment and Land Miscellaneous Case
E002 of 2023) [2025] KEELC 5296 (KLR) (17 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 5296 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
ENVIRONMENT AND LAND MISCELLANEOUS CASE E002 OF 2023**

MN KULLOW, J

MARCH 17, 2025

BETWEEN

ALEX NGOCHO PLAINTIFF

AND

DANIEL MOGESI DEFENDANT

RULING

1. By a Notice of Mention dated 6/10/2023 the Applicant sought for orders that the leave be granted to the Applicant to file his Appeal out of time. The Application was based on the ground that judgement in the matter being in Migori ELC Case No 6 of 2020 was delivered on 26/5/2022 and that the trial judge did not specify the time within which the intended appeal was to be filed.
2. The Applicant further contends that the appeal has high chances of success. He further states that he was in prison during the time when the judgement was read and the same was delivered in his absence.
3. The Application was opposed by way of a Replying Affidavit of the Respondent in which he stated that the application was made after one year and 7 months since the judgment was delivered and the same was spent. And further that the Applicant has not provided sufficient reasons for the delay.
4. I have considered the application before me and the submissions filed by the parties and the issue for determination before me is whether the Applicant has satisfied the conditions for the grant of our order of extension of time to file an Appeal out of time.
5. The Applicant contends that the delay to file the appeal was caused because the 1st Applicant had died and his death caused them not to be able to do anything. He further stated he himself the Applicant was imprisoned and could not file this appeal within time.



6. I have looked at the Affidavit and the order to extend time is discretionary in nature. I cannot exceed the same without any proof and within the boundaries established perimeters of the Law on the factors to be considered as was stated in the case of *Omar Shurie v Mariam Yafar* Civil Appeal No. 107 of 2020
7. Having considered the above, I find that the Notice in support of the Applicant has neither the death certificate in respect of the death of the 1st Applicant nor any proof of imprisonment of the Applicant save for his assertion.
8. When the Applicant avers that the delay in filing of the appeal was occasioned by other factors, he must be able to provide proof of the same in court and the Applicant having failed to do so, the motion dated 6/10/2023 lacks merit and the same is hereby dismissed with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 17TH DAY OF MARCH, 2025

MOHAMMED N. KULLOW

JUDGE

In the presence of:-

Vincent Court Assistant

No appearance For the Plaintiff

No appearance for the Defendant

