



REPUBLIC OF KENYA



**KENYA LAW**  
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**Njagi v Ndirangu & another (Miscellaneous Application 21 of 2023)  
[2023] KEELC 19920 (KLR) (21 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 19920 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
MISCELLANEOUS APPLICATION 21 OF 2023**

**JG KEMEI, J  
SEPTEMBER 21, 2023**

**BETWEEN**

**LUCY WANJA NJAGI ..... APPLICANT**

**AND**

**PETERSON KANYURU NDIRANGU ..... 1<sup>ST</sup> RESPONDENT**

**PETER WAWERU CHEGE ..... 2<sup>ND</sup> RESPONDENT**

*((An application for extension of time to allow the Appellant to file  
Memorandum of Appeal out of time against the Judgement in MCLE  
51 of 2021 delivered on the 7/2/2023 by Hon C. Kisiangani SRM))*

**RULING**

1. The applicant moved this court vide a notice of motion filed on the 5/4/2023 seeking the following orders;
  - a. Spent.
  - b. Stay of execution of the Judgment and or decree issued on the 7/2/2023.
  - c. Leave to file an appeal out of time against the whole Judgement delivered on the 7/2/2023.
2. The application is premised on the grounds set out herein together with the supporting affidavit of the Applicant where he deponed that the Judgment was delivered on the 7/2/2023. She is aggrieved by the said Judgment and intends to file an appeal out of time. That she can only do so with leave of the court. The delay in filing the said appeal was occasioned by factors beyond her control. That the delay in filing the appeal timeously arose because she was late in firming up her instructions to her counsel to file the appeal. That the intended appeal is meritorious and has a high chance of success. That she is willing to abide by any reasonable and just considerations that the court may impose. That she has



approached the court in good faith and as such no prejudice shall be occasioned upon the Respondent if the application is allowed.

3. The application is opposed vide the replying affidavit dated the 2/5/2023 in which the respondent stated that the leave of the court is not being sought in good faith nor is it intended to serve the ends of justice; the intended appeal has no chance of success in light of the facts at hand; the application is not brought in good faith and that the intention of the applicant is to delay and keep the matter in court as evidenced by the history of dilatory tactics already exhibited in the trial court.
4. Parties elected to file written submissions which I have read and considered.
5. The key issue is whether the application is merited.
6. Section 79G of the [Civil Procedure Act](#) provides as follows;

“Time for filing appeals from subordinate Courts Every appeal from a subordinate Court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower Court may certify as having been requisite for the preparation and delivery to the Appellant of a copy of the decree or order:

Provided that an appeal may be admitted out of time if the Appellant satisfies the Court that he had good and sufficient cause for not filing the appeal in time.”

7. The principles that guide the court in the exercise of its mandate under the said Rules have now been crystallized in the case of [Nicholas Kiptoo Arap Korir Salat vs. Independent Electoral and Boundaries Commission & 7 Others](#) [2013]eKLR in which the applicable threshold was laid by the apex court as follows; 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; a party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court; whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis; whether there is reasonable reason for the delay. The delay should be explained to the satisfaction of the court; whether there will be any prejudice suffered by the respondent of the extension is granted; whether the application has been brought without undue delay; and whether uncertain cases, like election petition, public interests should be a consideration for extending time
8. I have considered the authority in the Succession Cause No. 527 of 1981, [In the Matter of the Estate of Mbiyu Koinange, Deceased](#) where the matter is said to have taken 40 years in court and I find that the case is inapplicable in this instance given that from what I can gather from the pleadings the case was filed in 2021 and determined in 2023.
9. This court would like to agree with the submissions of counsel for the Respondent that though the law does not set out any minimum or maximum period of delay, the threshold is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for the delay is the key that unlocks the courts flow of discretionary favour. There has to be valid and clear reasons upon which the discretion of the court can be favourably exercised. See the case of [Andrew Kiplagat Chemaringo Vs. Paul Kipkorir Kibet](#) (2018)eKLR.
10. In this case the Applicant was late in filing the appeal by 28 days. The reason advanced for the delay in filing the appeal is that it was out of the control of the applicant. Further she states that the delay was occasioned by the time taken in firming her instructions to her counsel. I find that the applicant’s action in deciding whether or not to file an appeal within the statutory timelines was within her control



and the reason advanced is not plausible. In the circumstances I am unable to exercise discretion in favour of the applicant.

11. The application is without merit. It is dismissed with costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 21<sup>ST</sup> DAY OF SEPTEMBER, 2023 VIA MICROSOFT TEAMS.**

**J G KEMEI**

**JUDGE**

**Delivered online in the presence of;**

Mr. Mwangi HB Githaiga for Applicant

Gicheru for Respondent

Court Assistant – Phyllis & Lilian

