



**Kinyanjui (Suing on His Behalf as Chairman of Mugumo-ini West Community Self Help Group) & 2 others v Mauu & 3 others (Environment and Land Miscellaneous Application E061 of 2022) [2023] KEELC 20947 (KLR) (25 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20947 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**  
**ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E061 OF 2022**  
**A NYUKURI, J**  
**OCTOBER 25, 2023**

**BETWEEN**

**GEORGE NJOROGE KINYANJI (SUING ON HIS BEHALF AS CHAIRMAN OF MUGUMO-INI WEST COMMUNITY SELF HELP GROUP) 1<sup>ST</sup> APPLICANT**

**AGATTA WANGUI WAMBUGU (SUING ON HER BEHALF AND AS SECRETARY OF MUGUMO-INI WEST COMMUNITY SELF HELP GROUP) ..... 2<sup>ND</sup> APPLICANT**

**HARUN WAIGANJO (SUING ON HIS BEHALF AS A TREASURER OF MUGUMO-INI WEST COMMUNITY SELF HELP GROUP) ..... 3<sup>RD</sup> APPLICANT**

**AND**

**PATRICK MUMO MAUU ..... 1<sup>ST</sup> RESPONDENT**

**MWEU JOELI MULI ..... 2<sup>ND</sup> RESPONDENT**

**PETER MULWA MAUKUU ..... 3<sup>RD</sup> RESPONDENT**

**DAVID MUTINDA MAUKUU ..... 4<sup>TH</sup> RESPONDENT**

*(Application for leave to file an Appeal out of time from the Ruling delivered by the Honourable E. Kimaiyo PM on 18th August, 2022 in ELC No. E084 of 2021; George Njoroge & 2 Others vs Patrick Mumo Mauu & 3 Others)*

**RULING**

**Introduction**

1. Before court is an amended Notice of Motion dated 14<sup>th</sup> April, 2023, filed by the Applicants seeking the following orders;



- a. Spent.
  - b. That Applicants be granted leave to file an Appeal out of time against the whole Judgment and emanating orders in Civil Case No. ELC No. E084 of 2021 *George Njoroge Kinyanjui & 2 Others v Patrick Mumo Maukuu & 3 Others* as delivered virtually by Hon. E Kimaiyo on 18<sup>th</sup> August, 2022.
  - c. That the costs of the Application be provided for.
2. The application is anchored on grounds on the face of it and the Affidavit sworn by George Njoroge Kinyanjui and dated on 14<sup>th</sup> April, 2023. The Deponent stated that they had requested their Advocates for certified copies of the Judgment for their perusal so they could consider whether to appeal or not, and that the Advocates sent a letter to the court through their official email address requesting for the same on 18<sup>th</sup> August, 2022.
  3. He further stated that they were not satisfied with the Judgment of the court and by the time they were coming to an agreement of pursuing an appeal, the statutory time limit had already lapsed owing to the issue of mobilizing all the members of the group for a resolution to appeal. He also stated that they had paid for the certified copy of the Judgment on 7<sup>th</sup> October, 2022 but that they are yet to receive the same to date and only have a copy.
  4. He further stated that the Memorandum of Appeal raises triable issues and is neither frivolous nor vexatious and that the Respondents are unlikely to suffer any prejudice should this application be allowed.
  5. He stated that the intended appeal is arguable with a likelihood of success and the delay is not so inordinate as to be inexcusable before this court.
  6. The application is unopposed.
  7. Neither parties filed written submissions.

### **Analysis and determination**

8. I have considered the application, and in my considered view, the issue for determination is whether the Applicants have demonstrated sufficient cause for the court to extend time for filing appeal.
9. Section 79G of the *Civil Procedure Act* provides for the jurisdiction of court to extend time for filing appeal out of time as follows;

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 a good and sufficient cause for not filing the appeal in time.
10. Extension of time is an equitable remedy reserved for a deserving Applicant because it is not a right for any party. In considering whether to extend time, the court will consider several matters including, the period of delay, the reasons of the delay, the prejudice that may be suffered by the Respondent and the demands of justice in the circumstances of the case.



11. In the case of *Mombasa County Government —Vs- Kenya Ferry Services & Anor* (2019) e KLR, at paragraph 25 the Court held that;

25] Concerning extension of time, this Court has already set the guiding principles in the Nick Salat Case 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]

12. In *Edith Gichungu Koine vs Stephen Njagi Thoithi* [2014] eKLR the court stated as follows;

Nevertheless, it ought to be guided by consideration of factors stated in many previous decision of this court including, but no limited to, the period of delay, the reasons for the delay, the degree of prejudice to Respondent if the application is granted, and whether the matter raises issues of public importance, amongst others.

13. In the instant case, the application was made on 19<sup>th</sup> December, 2022, almost four (4) months after the Judgment was passed. The reasons given for the delay is that the Applicants were yet to obtain a certified copy of the Judgment and that it also took long to mobilise the group members for an appeal. The reasons given in my view are excusable as the Applicants are members of a self help group who needed to make an agreed decision on whether to appeal or not. In addition, the Applicants stated that they were not able to get certified copy of Judgment and proceedings in time, delaying them in deliberating over the matter. In my view, the reasons given by the Applicants are excusable in the circumstances of this case and I find and hold that the Applicants have given sufficient cause to warrant this court to extend time for filing appeal.

14. In the premises, the application dated 14<sup>th</sup> April, 2023 is merited and the same is allowed as follows;

- a. Leave is hereby granted to the Applicants herein to file appeal out of time against the decision in Mavoko ELC NO. E084 of 2021 delivered on 18<sup>th</sup> August, 2022.



- b. The Applicants to file and serve their appeal in twenty one (21) days of today.
- c. There is no order as to costs.

15. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 25<sup>TH</sup> DAY OF OCTOBER 2023 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM**

**A. NYUKURI**

**JUDGE**

In the presence of:

Ms. Odhiambo holding brief for Mr. Kinyanjui for Applicant

No appearance for Respondent

Mr. Abdisalam – Court Assistant

