



**Mulama v Makokha (Environment and Land Miscellaneous Application E003 of 2023) [2023] KEELC 20755 (KLR) (17 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20755 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E003 OF 2023  
DO OHUNGO, J  
OCTOBER 17, 2023**

**BETWEEN**

**ISHMAEL MULAMA ..... APPLICANT**

**AND**

**SOPHIA MAKOKHA ..... RESPONDENT**

**RULING**

1. By Notice of Motion dated February 21, 2023, the applicant is seeking the following orders:
  1. That this Honourable court be pleased to grant to the applicant leave to appeal out of time against the decision of Hon Gakuhi Chege, Vice Chairman made on February 18, 2022 vide Kakamega Business Premises Tribunal Case No 66 of 2018.
  2. That the attached memorandum of appeal be deemed duly filed upon payment of the requisite court filing fees.
  3. That the costs hereof be in the cause.
2. The application is supported by an affidavit sworn by the applicant who deposed that no landlord/tenant relationship existed between him and the respondent or even her predecessor. That the respondent filed Kakamega BPRT Case No 66 of 2018 against him and that a ruling was delivered in the matter on February 18, 2022 dismissing his application for review. He further deposed that he had representation by counsel during the application and that upon delivery of the ruling, he went into depression, developed high blood pressure and heart problems, and was put under treatment. That he was advised to avoid anything stressful to aid recovery and that after the treatment, he was involved in a road accident which incapacitated him for some time. He annexed a copy of a note dated February 21, 2023 from Makunga Sub-County Hospital, a copy of discharge summary showing an admission date of January 9, 2023 and discharge date of January 11, 2023 and a draft Memorandum of Appeal.



3. In response to the application, the respondent filed grounds of opposition dated April 13, 2023 wherein she took the position that the delay was inordinate and inexcusable, that there exists no landlord/tenant relationship between the parties hence the tribunal correctly held inter alia that it had no jurisdiction to entertain the application for review and that the applicant is guilty of non-disclosure. She therefore urged the court to dismiss the application with costs.
4. Parties sought to canvass the application through written submissions and directions were given to that effect. The applicant did not file any written submissions despite being given time to do so. The applicant did not also attend court on the date scheduled for mention to confirm filing of submissions. In the end, counsel for the respondent opted not to file any submissions and to rely entirely on the grounds of opposition.
5. I have considered the application, the supporting affidavit, and the grounds of opposition. The sole issue for determination is whether the orders sought should issue.
6. The principles that guide the court while considering an application for extension of time are that such an order is discretionary, and the applicant has the burden of laying a basis to the satisfaction of the court. The court considers such factors as whether there is a reasonable explanation for the delay, whether there will be any prejudice suffered by the respondent if the extension is granted and whether the application has been brought without undue delay. See the decision of the Supreme Court in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR.
7. The ruling sought to be appealed against was delivered on February 18, 2022. In terms of Section 16A (1) of the *Environment and Land Court Act, 2011*, an appeal from the subordinate court to this court is to be filed within 30 days of delivery of the judgment or ruling. Consequently, an appeal against the ruling ought to have been filed by March 18, 2022.
8. Pursuant to Section 16A (2) of the *Environment and Land Court Act, 2011*, this court has jurisdiction to admit an appeal out of time if the appellant satisfies the court that he had a good and sufficient cause for not filing it in time.
9. The present application was filed on February 22, 2023, a year after delivery of the ruling sought to be appealed against. The applicant contends that he went into depression upon delivery of the ruling and that he developed other medical problems including high blood pressure and heart problems. He says he was on treatment. According to him, he had representation by counsel when the application that led to the ruling was filed and determined. No reason has been given why counsel could not file the appeal within the requisite period even assuming that the applicant had medical challenges.
10. I have perused the note dated February 21, 2023 from Makunga Sub-County Hospital and I note that it does not give any dates of treatment. No actual attendance notes were provided. As regards the discharge summary, it shows an admission date of January 9, 2023 and discharge date of January 11, 2023. Both dates are well after the appeal was late by over nine months. From the material availed, it is not possible to verify if the applicant was unable to file the appeal as of March 18, 2022.
11. The applicant has failed to offer any reasonable explanation for the inordinate delay of one year and has thus failed to persuade the court to exercise discretion in his favour. I find no merit in Notice of Motion dated February 21, 2023. I dismiss the application with costs to the respondent.

**DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 17<sup>TH</sup> DAY OF OCTOBER 2023.**

**D. O. OHUNGO**



## **JUDGE**

### **Delivered in open court in the presence of:**

Mr Ogonji holding brief for Mr Amasakha for the Applicant

Mr Osango for the Respondent

Court Assistant: E. Juma

