



Mugambi v Deputy Commissioner North Imenti & 3 others (Environment and Land Appeal E012 of 2012) [2023] KEELC 22096 (KLR) (6 December 2023) (Ruling)

Neutral citation: [2023] KEELC 22096 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL E012 OF 2012
CK NZILI, J
DECEMBER 6, 2023**

BETWEEN

MARY KATHURE MUGAMBI APPELLANT

AND

THE DEPUTY COMMISSIONER NORTH IMENTI 1ST RESPONDENT

RUKIA SALEHE 2ND RESPONDENT

SAINA KANYUA (SUED AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF SALEH MUGWIKA – DECEASED) 3RD RESPONDENT

THE HON. ATTORNEY GENERAL 4TH RESPONDENT

RULING

1. The court is asked to extend the time the applicant can file a notice of appeal. The grounds are set out on the face of the application and the supporting affidavit of Saina Kanyua sworn on 16.9.2023. The 4th respondent in the appeal says judgment was delivered on 19.7.2023 in the absence of her lawyers on record, who had indicated the wrong date. It was averred that a copy of the judgment was obtained outside the statutory 14 days to file an appeal. The applicant contends that the court should allow the application in the interest of justice.
2. Mary Kathure Mugambi, the appellant/respondent, opposed the notice of motion by a replying affidavit sworn on 3.10.2023 as vexatious, frivolous, scandalous, and an abuse of the court process. It is averred that the alleged error of a wrong judgment date was not supported by evidence since cause lists are sent to the advocates forums every day.
3. Further, the respondents averred that the delay was inexcusable and lacked a satisfactory explanation. Lastly, the respondent urged the court to find that she should be allowed to enjoy the fruits of her judgment.



4. The applicant relied on written submissions dated 18.10.2023. It was submitted under Section 77 of the [Court of Appeal Rules](#) as read together with Section 7 of the [Appellate Jurisdiction Act](#); this court has the mandate to extend the time for giving notice of intention to appeal from its judgment even after time has expired. Reliance was placed on [Tatu Africa Holdings \(K\) Ltd vs Farm Africa Milly's Ltd](#) (2020) eKLR.
5. The respondent, by written submissions dated 30.10.2023, believes that no sufficient cause has been shown to warrant the grant of the prayers sought after the appeal period lapsed on 8.8.2023. The respondent submitted that the alleged error was ridiculous as it subjects the court to speculation; the date of learning about the judgment was not stated; the reason for waiting until September to apply has not been given, and the timelines and judgment delivery dates were given in open court. Reliance was placed on [Thuita Mwangi vs. Kenya Airways Ltd](#) (2003) eKLR, [Wilson Kiptoo Arap salat vs IEBC & others](#) (2015) eKLR, [Diplock \(K\) Ltd vs William Muthama Kitonyi](#) (2018) eKLR.
6. Whether the appeal has merits, the respondent submitted the applicant's defense, and the counterclaim was found statutorily time-barred and, therefore, stood no chance of success. Reliance was placed on [Wasike vs Swala](#) (1984) KLR 591.
7. The respondent submitted that she occupied the land after it was sold to her, followed by a title deed in 1984, yet she waited until over 30 years later, in 2015, to institute the suit. The respondent, therefore, submitted that her land was being wasted away due to long non-usage flowing from the dispute herein and, therefore, any proliferation of new applications was prejudicial to other rights of ownership and usage.
8. The respondents submitted that the cited law was inapplicable regarding the court's jurisdiction to hear and determine the application. Reliance was placed on [Omar Naaman Omar vs John Muasya Ngumu](#) (2007) eKLR on invocation of a wrong provision of the law and [Joel K Yegon & others vs John Rotich & others](#) Nairobi Misc Civil Application No. 995 of 2005.
9. The power to extend the time to lodge a notice of appeal is donated by Section 7 of the [Appellate Jurisdiction Act](#) (Cap 9). In [KAA & another vs Timothy Nduva Mutungi](#) (2014) eKLR, the court said the High Court could extend the time. In [Leo Sila Mutiso vs Rose Hellen Wangari Mwangi](#) NRB Civil Application No. 255 of 1997, the court set the parameters to consider as the length of the delay, the reasons for the delay, chances of the appeal succeeding, and degree of prejudice to the respondent.
10. In [Ngei vs Kibe & another](#) Civil Appeal Application E359 of 2021 (2021) KECA (KLR) 3rd December 2021 (Ruling), the court cited with approval [Imperial Bank Ltd & another vs Almasir Popat & others](#) (2018) eKLR, on other parameters as the conduct of the parties the need to balance the interest of a successful litigant and the one with a constitutional right of appeal and the need to protect a party's right to agitate its dispute against the need for timely disposal of disputes, the public interest issues and whether prima facie the intended appeal has high chances of success or was a mere frivolity.
11. The court further cited with approval [Arap Salat vs IEBC](#) (*supra*) that, though the discretion to extend time was unfettered, an explanation of the delay must be given, and if there were extenuating circumstances and whether the delay was inordinate as held in [Wasike vs Swala](#) (*supra*).
12. On the merits of the intended appeal and the prejudice to the opposite party in [Athuman Nusura Juma vs Afwa Mohamed Ramadhan](#) E. A nO.227 of (2015) and [Muchungi Kirangu vs James Muchungi Kiragu & another](#) (1998) eKLR, the court held that if the intended appeal were arguable, it would be wrong to shut an applicant out of court and deny him the right of appeal, unless it can be fairly be said his action was in the circumstances inexcusable and his opponent would be prejudiced by it.



13. In this application, the applicant blames the delay on her advocates on record, who allegedly misdiarized the matter. The advocates on record have not owned the mistake. The court records show that the advocates on record for the applicant were irregularly attending court. They nevertheless complied with the directives on filing written submissions dated 20.4.2023. The date for the judgment was fixed on 24.4.2023. If the 2nd and 4th respondents complied with the directives issued on 24.4.2023 and filed the written submissions dated 26.5.2023, they must have been aware of the directives and the date issued for the delivery of the judgment. Unfortunately, from the court record, none of the parties to the appeal, attended the delivery of the judgment.
14. Between 19.7.2023 and 16.9.2023, there is no explanation of why it took too long to ask the court whether the judgment had been delivered. No single letter was sent to the Deputy Registrar to make inquiries. The date the applicant was informed by his lawyers in August 2023 is not indicated.
15. As to prejudice and the merits of the intended appeal, no draft proposed memorandum of appeal has been attached to the affidavit in support. The applicant has not addressed the implications of the delay and the prejudice likely to be caused to the respondent with endless litigation.
16. The indifference and laxity on the part of the applicant shows disinterest in pursuing her right of appeal. The applicant should have endlessly pestered her advocates on record to know the outcome of her matter. The case belonged to the applicant and not her lawyers on record. It is not every infraction or dereliction of duty a party should blame his lawyers on record without shouldering a share of the blame inaction. In *Tana & Athi River Development Authority vs Jeremiah Kimigbo Mwakio & others* (2015) eKLR, the court said the failure of an advocate to do what was required of them by law was not excusable.
17. Rule 77 (2) of the *Court of Appeal Rules* 2022 is the applicable law on filing of a notice of appeal. Rule 84 thereof requires filing of both a memorandum of appeal and a record of appeal. The applicant has not even sought for and paid for typed proceedings. See *Turea Ltd t/a Dr. Mattress vs Mohamed* C. A No. E030 of 2022 (2022) KECA 1271 (271) (KLR) (18th November 2022) Ruling.
18. The upshot is that I find the application lacking merits. The same is dismissed with costs.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 6TH DAY OF DECEMBER 2023.

In presence of

C.A Kananu

Mrs. Mutegi for murigi for the respondent

HON. CK NZILI

JUDGE

