



**Paul v Muthuri ((Sued as the Legal Representative of the Estate of Charles Muthuri Rugiri)) (Miscellaneous Application E009 of 2023)
[2023] KEELC 22104 (KLR) (6 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22104 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
MISCELLANEOUS APPLICATION E009 OF 2023
CK NZILI, J
DECEMBER 6, 2023**

BETWEEN

JOSEPH MAGIRI PAUL APPLICANT

AND

DICK MUTUGI MUTHURI RESPONDENT

(SUED AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF CHARLES MUTHURI RUGIRI)

RULING

1. The court is asked through an application dated September 22, 2023 to enlarge the time for the applicant to appeal against the lower court judgment delivered on August 10, 2023. The reasons are that a copy of the judgment was delivered after typing on September 5, 2023; the delay was not inordinate or unreasonable; the application and deposit for the copies were made on time, and if it is not allowed, he stands to suffer prejudice substantial loss and damage. All these reasons are contained in the supporting affidavit by Joseph Magiri Paul sworn on September 22, 2023, where he has attached the application, payment receipt, copy of the judgment, and a draft memorandum of appeal as annexures marked JMP "1" - JM P "4".
2. Dickson Mutugi Muthuri, the respondent, is opposed to the application. His reasons are contained in a replying affidavit sworn on October 4, 2023. He said the payment for the copies was made late on August 10, 2023, per a request letter received at the registry. The respondent says that after the proceedings were supplied on September 5, 2023, the applicant took too long to apply up to September 25, 2023. Further, the respondent avers there has been inordinate delay, which has not been explained, the only inference being that the applicant has been indolent.
3. Lastly, the respondent says the memorandum of appeal is helpless and that the decree was impossible to execute since it simply dismissed the applicant's suit.



4. The applicant has filed without leave a supplementary affidavit dated October 23, 2023. It raises new grounds not raised in the application or the replying affidavit. The same is hereby disregarded on those two grounds.
5. As to the submissions dated October 30, 2023, the applicant states the delay has been satisfactorily explained; the court has unfettered discretion to extend time; he has met the legal ground for extension of time, and no prejudice would be occasioned to the respondent if time was extended. Reliance was placed on *Leo Sila Mutiso v Hellen Wangari Mwangi* (1992) 2 EA 231, *Liberato Kivanga Manga v Prime Bank Ltd* CA No 563 of 2019 and *Ann Waitberero Kaberere v Open Hire Ltd* CA No 515 of 2019.
6. By written submissions dated November 6, 2023, the respondent submits that the prayers sought were not merited since the applicant was indolent in applying and procuring the proceedings and the application was an afterthought; it was made in bad faith; no efficient reasons are given; he slept on his rights; the delay was not excusable and that his capacity was limited to represent the deceased in the lower court. Reliance was placed on section 79G of the *Civil Procedure Act*, *Edith Gichungu Koine v Stephen Njagi Thoitibi* (2014) eKLR, *Aviation Cargo Ltd v St. Mark Freight Services Ltd* (2014) eKLR, *APA Insurance Ltd v Nicholas Muturi* (2016) eKLR, & *George Mwenda Muthuri v Mama Day Nursery & Primary School* Nyeri CA No 14 of 2014.
7. To extend time to file an appeal out of time is a discretionary power to the court exercisable on sound principles. In *Liberato Kivanga Manga v Prime Bank Ltd* (*supra*), the court cited with approval *Leo Sila Mutiso v Hellen Wangari Mwangi* (*supra*) that a court should consider the delay's length, the reason for the delay, the chances of the appeal succeeding, and the degree of prejudice to the respondent. Further, the court cited with approval *Fakir Mohammed v Joseph Muganbi & others* (2005) eKLR that the effect of the delay on the administration of justice, compliance with time limits resources of the parties and if the matter raises issues of public importance were some of the relevant considerations.
8. Additionally, the court cited *Muringa Company Ltd v Archdiocese of Nairobi Registered Trustees* CA No 190 of 2019 that the parties conduct, the need to balance the intentions of the two parties, the need to protect their constitutional rights, and the need for timely resolution of disputes were other factors to consider in an application for extension of time.
9. On what amounts to inordinate delay, the court cited with approval *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* (2018) eKLR that the law has not set minimum or maximum period of delay, save that it was to be satisfactorily explained with clear and valid reasons.
10. This application was filed on September 25, 2023, 20 days after the applicant obtained the proceedings. The respondent terms the period of 20 days as inordinate and unexplained. The applicant says the delay was not unreasonable or inordinate. Further, he says the respondent would not be prejudiced if the application is allowed as the subject matter was land.
11. In the replying affidavit, the respondent admitted the lower court suit was merely dismissed; a negative decree was handed over and cannot be executed. The respondent did not expressly state what prejudice or injustice has been occasioned to him by the delay or will be occasioned if the application is allowed. The court has to balance the constitutional rights of the two parties and especially the applicant's undoubted right of appeal. Prejudice denotes conduct that delays the disposal of the appeal or hinders the cause of justice.
12. In *Kenya Breweries Ltd v Lawrence Ndutu & others* (2014) eKLR, the court said the continued litigation, dying, and opting out of the proceedings out of depression militated against extending time



to appeal. The onus was on the respondent to demonstrate prejudice that costs may not remedy. The draft memorandum of appeal also raises arguable points that this court should consider.

13. This application is allowed with costs to the respondent, the memorandum of appeal to be filed within 14 days from the date hereof.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU

ON THIS 6TH DAY OF DECEMBER 2023

In presence of

C.A Kananu

Miss Mugo for the applicant

Kimotho for respondent

HON. CK NZILI

JUDGE

