



**Lesira v Mopel & another (Environment and Land Miscellaneous Application
E034 of 2024) [2025] KEELC 3403 (KLR) (25 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3403 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E034 OF 2024
MD MWANGI, J
APRIL 25, 2025**

BETWEEN

EDWARD KARRAO LESIRA APPLICANT

AND

MBARIRA MOPEL 1ST RESPONDENT

BRYAN MPOKE MOPEL 2ND RESPONDENT

RULING

(In respect of the notice of motion dated 5th July 2024 brought under the provisions of Sections 79 G & 3A of the [Civil Procedure Act](#) seeking leave to appeal out of time)

Background

1. The Applicant herein seeks leave to appeal out of time against the judgment of Hon. Vicky Kachuodho (Principal Magistrate) in Kajiado MCELC/E028/2023 delivered on 17th May 2024. The application is premised on the grounds that the advocate for the Applicant (proposed Appellant) wrongfully filed a memorandum of appeal dated 22nd May 2024 together with an application for stay in the High Court instead of this court.
2. The Applicant pleads that the mistake by his counsel was not deliberate nor intentional and the advocate had indeed clearly indicated on the memorandum of appeal and the application for stay that the same were intended for the Environment and Land Court but during electronic filing, he wrongly selected the High Court –Civil Division instead of the Environment and Land Court. The Applicant too prays for orders of stay of execution pending hearing and determination of the appeal.
3. The application is further supported by the affidavit of Kores Rose Simaloi sworn on 5th July 2024 where the deponent reiterates the grounds on the face of the application. She has further attached as



annexures, the impugned judgment and the memorandum of appeal and the application for stay of execution erroneously filed in the High Court.

Response by the Respondents.

4. The application is opposed by the Respondents herein by way of the replying affidavit sworn by Mbarira Mopel, the 1st Respondent on 4th October, 2024. The deponent asserts that the application is incompetent and incurable and has not sufficiently explained the delay in filing the intended appeal.
5. The deponent admits that he is aware of the appeal filed in the High Court which had indeed been served upon his advocates alongside the application dated 22nd May 2024. His advocate then filed a preliminary objection dated 11th June 2024 raising the issue of jurisdiction together with a replying affidavit dated 11th June 2024. That was what led the advocate for the Applicant to withdraw the appeal before the High Court vide the notice of withdrawal dated 16th September 2024.
6. The deponent accuses the Applicant's advocate of negligence and carelessness causing the filing of the appeal in a court lacking jurisdiction. The Applicant is therefore underserving of the exercise of the court's discretion to extend time. The reasons advanced by the Applicant are not plausible.
7. The deponent further opposes the grant of orders of stay of execution on the basis that the Applicant has not met the threshold for the grant of the orders for the various reasons advanced in the replying affidavit.

Court's directions.

8. The court directed that the application be canvassed by way of written submissions. Both parties complied and the court has had the opportunity to read and consider the same in writing this ruling.

Issues for determination.

9. The main issue for determination in this court's opinion is whether the Applicant has made a case for the grant of leave to appeal out of time. I say so because the application for stay pending appeal is premature and lacking in legal basis. What is before me is a miscellaneous application. An appeal is yet to be filed.
10. The jurisdiction of this court under order 42 rule 6 of the *Civil Procedure Rules* can only be invoked upon the filing of a competent appeal in accordance with the provisions of the *Civil Procedure Act* and Rules. I will therefore proceed to determine the identified issue.

Determination.

11. Both sides are in agreement that this court has the jurisdiction to extend time to file an appeal outside the statutory timelines in deserving cases. The Respondent cited the decision of the Court of Appeal in the case of *Paul Musili Wambua v Attorney General & 2 others* [2015] eKLR where the court stated that;

“It is now settled by a long line of authorities by this court that the decision whether or not to extend the time for filing an appeal, the judge exercises unfettered discretion. However, in the exercise of such discretion, the court must act upon reasons not based on whim or caprice. In general, the matters which a court takes into account in deciding whether or not to grant an extension of time are; the length of the delay, the reason for the delay, the



chances of the appeal succeeding if the application is granted, the degree of prejudice to the Respondent if the application is granted”.

12. The above position on the considerations whether or not to grant leave to appeal was reiterated in the case of *Thuita Mwangi v Kenya Airways Limited* (2003) eKLR, where the Court of Appeal (differently constituted), held that some of the factors to be considered include;
 - a. The period of delay;
 - b. The reason for the delay;
 - c. The arguability of the appeal;
 - d. The degree of prejudice which could be suffered by the Respondent if the extension is granted;
 - e. The importance of compliance with time limits to the particular litigation or issue and;
 - f. The effect if any on the administration of justice or public interest if any is involved.
13. In addition to the above considerations, this court is alive to its obligations under Article 159 (2) (a) (b) (c) and (d) of *the Constitution* and Sections 1A and 1B of the *Civil Procedure Act* as well as Section 3 and 19 of the *Environment and Land Court Act* to foster the overriding objective to facilitate the just, expeditious, proportionate and accessible resolution of disputes.
14. Having carefully considered the application herein and the response by the Respondents, I note that the application before me was filed on 5th July 2024 forty nine (49) days after the delivery of the judgment sought to be appealed against. The explanation given for the delay is not only plausible but is also supported by material evidence.
15. In the case of *Markson Karani Muchunku v Joseph Ngari Gituku* (2021) eKLR, cited by the Respondents, the court was of the view that the door of justice should not be closed because of a mistake committed by a lawyer of great experience who ought to have known better. The court reiterated that a mistake is a mistake.
16. Having looked at the memorandum of appeal, I am persuaded it raises arguable issues in the sense of not whether it will probably succeed or not but whether it is an arguable one. The Applicant is therefore deserving of the exercise of this court’s discretion to extend time to allow him the opportunity to exercise his undoubted right of appeal.
17. The court therefore grants leave to the Applicant to file and serve his memorandum of appeal in the next 14 days from the date of this ruling. The costs of the application shall be in the cause.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 25TH DAY OF APRIL 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Ms. Apolot for the Respondents

Ms. Simaloi for the Applicant

Court Assistant: Mpoeye



M.D. MWANGI
JUDGE

