



Sadiki Growers Limited & another v Richard A Oncuru t/a RA Onchuru & Company Advocates & another (Environmental and Land Originating Summons E002 of 2025) [2025] KEELC 3850 (KLR) (25 April 2025) (Judgment)

Neutral citation: [2025] KEELC 3850 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E002 OF 2025**

MD MWANGI, J

APRIL 25, 2025

BETWEEN

SADIKI GROWERS LIMITED 1ST APPLICANT

CHARLES EDWARD MOUSLEY 2ND APPLICANT

AND

**RICHARD A ONCURU T/A RA ONCHURU & COMPANY
ADVOCATES 1ST RESPONDENT**

FINTEL LIMITED 2ND RESPONDENT

(Being an appeal for leave to appeal out of time, being an appeal from the judgment in the Chief Magistrates Court ELC Court of Kenya at Kajiado (Hon. L.L. Gicheha, CM) delivered on 20th April 2023 in CM ELC No. 48 of 2019)

JUDGMENT

In respect of the notice of motion dated 16th May 2024 seeking leave to file an appeal out of time)

Background

1. The application under consideration is the notice of motion dated 16th May 2024 whereby the applicant prays for leave to file an appeal out of time against the judgment delivered on 20th April 2023 by the Kajiado Chief Magistrate's Court (Hon. L.L. Gicheha CM) in Kajiado CMELC 48 of 2023. The application is premised on the grounds on the face of it and on the supporting affidavit of by Brian Mbugua Kariuki sworn on 16th May 2024.
2. The applicant avers that the impugned judgment was delivered on 20th April 2023 but it was only communicated to its advocate on 11th June 2023. The applicant upon perusing the judgment was



aggrieve by it and decided to appeal against it. His advocates filed a consent allowing them to come on record for the applicant in the case before the subordinate court on 20th June 2023, together with a letter requesting for certified copies of the proceedings, judgment and decree to enable them make an application to seek leave to appeal out of time.

3. After a long wait, the registry availed the applicant the documents sought on 29th September 2023. However, the documents availed were erroneous in terms of indicating the date of delivery of the judgment and the substance of it. In spite of taking up the issue with the executive officer of the court to rectify the errors, no action was forthcoming prompting the applicant to lodge a complaint with the Judicial Service Commission on 10th November 2023. The rectified documents were not availed until the month of May 2024 by which time, the statutory period provided for lodging appeals to this court had off course lapsed.
4. The applicant pleads that the delay in lodging the appeal and this application was occasioned by circumstances beyond his control; it is therefore excusable. In any event, he states that he has an arguable appeal with high chances of success. He urges the court to exercise its unfettered discretion in his favour. He has attached the draft memorandum of appeal as an annexure.

Response by the responden

5. The respondent's response to the application was by way of a replying affidavit sworn by Hillary Maina Chege, a director of the respondent company on 31st July 2024. The deponent deposes that the judgment in the matter before subordinate court was delivered in the presence of the advocates for both parties. The delay in lodging the appeal by the applicant therefore is not only inexcusable but also inordinate.
6. The respondent urges the court to dismiss the application for want of merit since the delay has not been sufficiently explained..

Applicant's further affidavi.

7. I note that the applicant filed a further affidavit sworn by one Bryan Mbugua Kariuki on 10th September 2024. The deponent reiterated the assertions in his application and supporting affidavit. He stated that the reasons for failure to lodge the appeal within the stipulated time are well explained in his supporting affidavit. He affirmed that he had even attached a certificate of delay to his supporting affidavit contrary to the assertions by the respondent.

Directions by the cour.

8. The directions by the court were that the application be canvassed by way of written submissions. Both parties complied and the court has had occasion to read and consider the submissions which now form part of the record before this court. I therefore need not replicate them verbatim in this ruling.

Issues for determinatio

9. Having carefully considered the application and the supporting affidavits, the response by the respondent as well as the submissions by the parties, the sole issue for determination is whether the application is merited.

Analysis and determinatio.

10. Sections 16A of the ELC Act and 79G of the Civil Procedure Act stipulate that appeals from subordinate courts and local Tribunals shall be filed within a period of 30 days from the date of the



decree or order appealed against. The sections however provide 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.

11. The applicant's application before me is pegged on the above provisions. The appellant explains that the delay was caused by administrative bottlenecks as tabulated earlier on.
12. The guiding principles concerning extension of time are well settled. In the case of Mombasa County Government –vs- Kenya Ferry Services and another (2019) eKLR, the Supreme Court of Kenya reiterated the principles it had set out earlier in the Nick Salat Case in the following words,

“...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.

- i. 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.
 - ii. A party who seeks extension of time has the burden of laying a basis to the satisfaction of the court.
 - iii. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case by case basis.
 - iv. Where there is a reasonable (cause) for the delay, (the same should be expressed) to the satisfaction of the court.
 - v. Whether there will be any prejudice suffered by the respondents if extension is granted.
 - vi. Whether the application has been brought without unreasonable delay; and
 - vii. Whether in certain cases like election petitions, public interest should be a consideration for extending time.”
13. In this case, though the application was filed after a long period of time, the applicant has elaborately explained the reasons for the delay which were beyond his control. The applicant has demonstrated reasonable cause for the delay to the satisfaction of the court. I am satisfied by the explanations by the applicant.
 14. The court further upon perusal of the grounds of appeal in the draft memorandum of appeal is persuaded that the intended appeal is not frivolous; not in the sense whether it will succeed or not but whether it is an arguable one. Consequently, the application for leave to file an appeal out of time is allowed.
 15. In concluding this ruling, I need to comment on the assertion by the respondent to the effect that the applicant has not attached a resolution of the company authorising the filing of an appeal and or this application. I do not think that that the law requires the filing of a further resolution of a company to lodge an appeal against a decision in a suit where the company was already a party and had presumably already filed a resolution authorising the filing of that suit in the first place.



16. The applicant is granted leave to file the intended appeal out of time, in the next 14 days from the date of this ruling.

17. The costs of this application shall be in the cause.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 8TH DAY OF MAY 2025.

M.D. MWANGI

JUDGE

In the virtual presence of

Ms. Mmbifwa h/b for Mr. Ombati for the applicant

N/A by the respondent

Court Assistant: Mpoye

M.D. MWANGI

JUDGE

