



**Karimi & 2 others v National Land Commission & 5 others (Environment and Land Miscellaneous Application 12 of 2021) [2022] KEELC 2697 (KLR) (19 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 2697 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 12 OF 2021**

**JO OLOLA, J  
MAY 19, 2022**

**BETWEEN**

**JORAM MUKURI KARIMI ..... 1<sup>ST</sup> APPLICANT  
KIMANI MUCHIRI MBAGAYA ..... 2<sup>ND</sup> APPLICANT  
PETER MWANGI KAGAI ..... 3<sup>RD</sup> APPLICANT**

**AND**

**NATIONAL LAND COMMISSION ..... 1<sup>ST</sup> RESPONDENT  
COUNTY GOVERNMENT OF NYERI ..... 2<sup>ND</sup> RESPONDENT  
KENYA INFORMAL SETTLEMENT IMPROVEMENT PROGRAMME .... 3<sup>RD</sup>  
RESPONDENT  
GEORGE MAINA NJOROGE ..... 4<sup>TH</sup> RESPONDENT  
PETER NJATHI WAIGWA ..... 5<sup>TH</sup> RESPONDENT  
STEPHEN KAGOKO MAINA ..... 6<sup>TH</sup> RESPONDENT**

**RULING**

1. By the Notice of Motion dated 24<sup>th</sup> August, 2021 and filed herein on 27<sup>th</sup> August 2021, Joram Mukuri Karimi, Kimani Muchiri Mbagaya and Peter Mwangi Kagai (hereinafter “the Applicants”) pray for an order that this Court may be pleased to grant them leave to file an intended appeal out of time against the Judgment and Decree of the Honourable W. Kagendo, C.M., delivered on 30<sup>th</sup> June, 2021 in Nyeri MCL & E 242 of 2018.



2. The application is supported by an affidavit jointly sworn by the Applicants wherein they aver at Paragraphs 2 to 7 thereof as follows:

- “2. That the Judgment was delivered on 30<sup>th</sup> June, 2021 and we (were) dissatisfied and immediately applied for proceedings for appeal. Annexed hereto and marked “JMK1” is a true Photostat copy of the Court receipt for deposit paid for the proceedings;
3. That they were not ready for collection as on 12<sup>th</sup> August, 2021. Annexed hereto and marked “JMK II” is a true photostat copy of the Judgment;
5. That we have an arguable appeal (as) a draft memorandum filed herewith attests;
6. That there was sufficient cause for our being late in filing appeal; and
7. That it is only fair and just for this Honourable Court to grant leave, and we undertake to abide by the Court’s conditions in granting us leave.”

3. The application is opposed. By their Grounds of Opposition dated and filed herein on 1<sup>st</sup> October 2021, the County Government of Nyeri (the 2<sup>nd</sup> Respondent) opposes the application on the grounds:

1. That the Applicants have not advanced good and sufficient reasons for not filing the intended appeal within the stipulated time frame taking into account that proceedings are not required in filing the Memorandum of Appeal;
2. That it is in the interest of justice to disallow the instant application specifically to ensure that the litigation in this matter comes to an end.

4. The Kenya Informal Settlement Improvement Programme (the 3<sup>rd</sup> Respondent) is equally opposed to the application. By Grounds of Opposition dated and filed herein on 11<sup>th</sup> November, 2021 by the Honbournable the Attorney General, the 3<sup>rd</sup> Respondent asserts:-

1. That the application is fatally and incurably defective;
2. That the application has been brought in bad faith since the Applicant at the Chief Magistrates Court did not adduce any evidence to prove their case;
3. That the appeal has been brought after unreasonable delay and the Applicant has not demonstrated the reason for the delay; and
4. That it is in the interest of Justice that the Applicant’s application be dismissed with costs to the Respondents.

5. George Maina Njoroge, Peter Njathi Waigwa and Stephen Kagoko Maina (the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents respectively) are similarly opposed to the application. In a Replying Affidavit sworn on their behalf by the 4<sup>th</sup> Respondent and filed herein on 21<sup>st</sup> September 2021, the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents aver at Paragraphs 3 to 7 thereof as follows:

3. That the application is bad in law as there is no letter attached to show that indeed the Applicants herein applied for proceedings for purposes of an appeal, further no follow up letters have been attached to ascertain the same;
4. That one of the purported Applicants, the 2<sup>nd</sup> Applicant is deceased as such he could not have attested this application (Annexed and marked GMN-1 if a copy of the application before the lower Court for substitution dated 16<sup>th</sup> November, 2020);
5. That no sufficient reasons have been adduced to allow the application;



6. That the delay in bringing this application the Judgment having been delivered on 30<sup>th</sup> June, 2021 has not been explained;

7. That the application is misconceived in law and lacks merit and the same should be dismissed with costs to the Respondents herein.

6. I have carefully perused and considered the application as well as the response thereto. Similarly, I have considered the submissions and authorities placed before me by the parties.

7. The three Applicants herein pray for an extension of time to enable them to file an appeal arising from the decision of the Chief Magistrate Nyeri delivered on 30<sup>th</sup> June, 2021 in Nyeri MCL & E 242 of 2018.

8. The Applicants aver that they were dissatisfied with the said decision and that they had applied for proceedings to enable them appeal but the same were not ready until the month of August 2021 and hence the delay.

9. The time for filing an appeal to this Court from a decision of the subordinate Court is provided under Section 79 G of the Civil Procedure Act as follows:

“79G. Every appeal from a subordinate Court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower Court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order.

Provided that an appeal may be admitted out of time if the appellant satisfies the Court that he had good and sufficient cause for not filing the appeal in time.”

10. Arising from the foregoing, it was evident that this Court is indeed clothed with the power to grant an extension of time where good and sufficient cause is shown. The principles for consideration in such an application were set out by the Supreme Court of Kenya in *Nicholas Kiptoo Arap Korir Salat -vs- IEBC & 7 Others* (2014) eKLR where the Court observed as follows:

“1. 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;

2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the Court;

3. Whether the Court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;

4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;

5. Whether there will be any prejudice suffered by the respondents if the extension is granted;

6. Where the application has been brought without undue delay;

7. Whether in certain cases, like election Petitions, public interest should be a consideration for extending time.”

11. In the matter before me, the reason given by the Applicants for the two months delay in filing the appeal is the contention that they applied for and were waiting for proceedings to be typed and availed to them. This Court did not however find that as a good ground to warrant the delay. I say so because



I am not aware of any requirement in law that forbade the Applicants from filing a Memorandum of Appeal in the absence of the said proceedings.

12. At any rate, while the Applicants contend that they immediately applied after the Judgment for the proceedings and that the same were not ready for collection on 12<sup>th</sup> August, 2021, neither the letter requesting the proceedings nor any other letter making a follow up has been annexed to the Supporting Affidavit.

13. Indeed as the Supreme Court stated in the Nicholas Salat Case (Supra):

“ ... a ground of delay of getting typed proceedings is not a prima facie panacea for a case of delay whenever it is pleaded. Each case has to be determined on its own merit and all relevant circumstances considered. It is worth reiterating that in consideration whether or not to extend time, the whole period of delay should be stated and explained to the satisfaction of the Court.”

14. In the circumstances herein, I was not persuaded that the Applicants had given any satisfactory explanation for the delay in filing the appeal.

15. The upshot is that I find no merit in the Motion dated 24<sup>th</sup> August, 2021.

16. I make no order as to costs.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AT NYERI THIS 19<sup>TH</sup> DAY OF MAY, 2022.**

In the presence of:

Mr. Macharia for the 2<sup>nd</sup> Respondent

Mr. Theuri holding brief for Muchai for the 4<sup>th</sup> to 6<sup>th</sup> Respondents

Mr. Mkok holding brief for Mumbi for 3<sup>rd</sup> Respondent

Court assistant – Kendi

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**J. O. OLOLA**

**JUDGE**

