



Ndong'ora v Maringa & 3 others (Environment & Land Miscellaneous Case E007 of 2024) [2025] KEELC 3334 (KLR) (8 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3334 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT & LAND MISCELLANEOUS CASE E007 OF 2024**

AK BOR, J

APRIL 8, 2025

BETWEEN

HARRISON NJOKA NDONG'ORA APPLICANT

AND

JANE MUTURI MARINGA 1ST RESPONDENT

LYDIA NJIGI NJIRU 2ND RESPONDENT

JOSELINE M BANDI MUKIRI 3RD RESPONDENT

PETERSON MBOGO MWARAKITHIA 4TH RESPONDENT

RULING

1. Through the application dated 28/3/2024, the Applicant sought leave to file an appeal out of time against the judgement of Hon E.N Wasike, Principal Magistrate, delivered on 17/11/2022 in Siakago MC ELC Case No 17 of 2020. The application was made on the grounds that the Applicant was unable to file an appeal on time because of financial constraints. Initially, he filed the appeal without first seeking leave in Embu ELC Appeal No E001 of 2023 and had to withdraw that appeal. He now seeks leave of this court to file the appeal out of time. The Applicant swore the affidavit in support of the application and annexed copies of the notice of withdrawal of the earlier appeal and the draft memorandum of appeal.
2. The 2nd, 3rd and 4th Respondents opposed the application vide the replying affidavit of Njeru Ithigah advocate, sworn 3/6/2024. The Respondents contended that upon the judgement being delivered on 17/11/2022, the right of appeal within 30 days was explained to the Applicant. The Respondents pointed out that the present application was filed 16 months after delivery of the judgement without a justifiable reason. They urged that the application was a calculated move to delay and stay execution of the judgement indefinitely. Further, that the Applicant had not provided security as required under Order 42 Rule 6(2) of the *Civil Procedure Rules*. The Respondents urged that should the application



- be allowed, strict conditions and timelines should be imposed including the deposit of security for the performance of the decree.
3. Parties filed and exchanged written submissions which the court has considered. The Applicant submitted that he had provided a reasonable and sufficient reason for the delay which was occasioned by factors beyond his control. He urged that this court was empowered to extend timelines by Order 50 Rule 6 of the *Civil Procedure Rules* for sufficient reasons. The Respondents urged that the application should be dismissed for the reasons set out in their replying affidavit.
 4. The issue for determination is whether the court should grant leave to the Applicant to file the appeal out of time. Section 79G of the *Civil Procedure Act* provides that an appeal from a subordinate court to the High Court should be filed within 30 days of the date of judgement or order appealed against. The provision allows the court to extend time if sufficient cause is shown. Order 50 Rule 6 of the *Civil Procedure Rules* empowers the court to extend time upon sufficient cause being demonstrated. In *Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] KESC 12 (KLR), the court identified relevant factors to be considered in the exercise of the discretion to extend time. They include the reason for the delay, the length of the delay, the degree of prejudice to the opposing party, and whether the intended appeal has merit.
 5. The judgment sought to be appealed against was delivered on 17/11/2022 and the application was filed on 3/4/2024, a delay of approximately 15 months. The explanation offered for the delay is financial constraints. The Applicant demonstrated the effort which he previously made to file an appeal which he withdrew because it was filed out of time without leave. This explains the further delay. Even though the delay on the part of the Applicant was inordinate, it has been sufficiently explained. The draft memorandum of appeal which the Applicant exhibited raises arguable issues.
 6. This being is an application for extension of time to file an appeal and not an application for stay of execution, the issue of security for costs does not arise. The court allows the application dated 28/3/2024. The costs of the application will be in the cause.

DELIVERED VIRTUALLY AT EMBU THIS 8TH DAY OF APRIL 2025.

K. BOR

JUDGE

In the presence of: -

Mr. Githinji Ithigah for the Respondent

Diana Kemboi- Court Assistant

No appearance for the Applicant

