



**Mutiga & another v Nairobi City County Government & 2 others; National Environment Management Authority (Interested Party) (Miscellaneous Application E213 of 2021) [2022] KEELC 2313 (KLR) (30 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 2313 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
MISCELLANEOUS APPLICATION E213 OF 2021  
LC KOMINGOI, J  
JUNE 30, 2022**

**BETWEEN**

**ERASTUS RIUNGU MUTIGA ..... 1<sup>ST</sup> APPLICANT**

**MWENDA NICHOLAS M'TWARUCHIU ..... 2<sup>ND</sup> APPLICANT**

**AND**

**NAIROBI CITY COUNTY GOVERNMENT ..... 1<sup>ST</sup> RESPONDENT**

**MIDAX INVESTMENT LTD ..... 2<sup>ND</sup> RESPONDENT**

**KENYA URBAN ROADS AUTHORITY ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY .... INTERESTED PARTY**

*(Being an application for enlargement of time to file Notice of Appeal, from the Judgment of the Milimani Environment and Land Court by Hon. Lady Justice Komingoi delivered on 21st October, 2021, in ELC PET No 30 of 2019.)*

**RULING**

1. This is the Notice of Motion dated 24<sup>th</sup> November 2021 brought under section 7 of the *Appellate Jurisdiction Act*, Rule 30 Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013. Article 48 and 159 (2) of *the Constitution* of Kenya (2010) and other enabling provisions of the law.
2. It seeks orders:-



1. Spent.
  2. That the honourable court be pleased to enlarge time for giving of Notice of Intention of Appeal.
  3. That upon such enlargement of time for giving notice of intention to appeal, the Notice of Appeal on record be deemed as duly filed.
  4. That costs of this application be in the cause.
3. The grounds are on the face of the application and are set out in paragraph (a) to (l).
  4. The Application is supported by the affidavit sworn by, Erastus Riungu Mutiga and Nicholas M'Twaruchiu the Applicants, on the 23<sup>rd</sup> November 2021 and further affidavit sworn on the 20<sup>th</sup> April 2021.
  5. The Application is opposed. There are grounds of opposition filed by the 1<sup>st</sup> Respondent filed on the 1<sup>st</sup> Respondent dated 21<sup>st</sup> March 2022.
  6. It appears the 2<sup>nd</sup> and the 3<sup>rd</sup> Respondents and the Interested Party did not file any responses.
  7. On the 23<sup>rd</sup> March 2022, the court with the consent of parties directed that the notice of motion be canvassed by way of written submissions.
  8. I have considered the notice of motion and the affidavits in support. I have also considered the response thereto, the written submissions and the authorities cited. The issue for determination is whether this application is merited.
  9. It is the Applicants' case that they were only able to be supplied with copies of judgment on 8<sup>th</sup> November 2021. That the Notice of Appeal was filed on 12<sup>th</sup> November 2021 which was eight (8) days late. They submit that the delay has been explained and that it is not inordinate.
  10. Section 7 of the *Appellate Jurisdiction Act*; Cap 9 Laws of Kenya provides that:
 

“Power of the High Court to extend time

The High Court may extend the time for grant of notice of intention of appeal from a judgment of the High Court or for making an application for leave to appeal or for a certificate that the case is for appeal notwithstanding that the time for giving such notice or making such appeal may have already expired...”

It is clear from the above provision that this court has jurisdiction to extend time for giving notice of intention to appeal.
  11. I note that this application was filed eight (8) days late. In my view this does not amount to inordinate delay.
  12. I have gone through the affidavit in support of the application, I find the explanation given for the delay is plausible.
  13. In the case of *Imperial Bank Limited (in Receivership) & Another vs Alnashir Popat & 18 Others* [2018] e KLR; K. M'Inoti J held thus:-
 

“...a party may apply for extension of time either before or after taking the action in respect of which extension of time is sought. In this case, the appellants have already filed the appeal



and seek extension of time to the end that the appeal is deemed to have been filed on time. It is therefore possible to list the appeal for hearing and determination on priority basis and without further delay, which in turn will obviate or alleviate prejudice to any of the parties. Taking into account all the forgoing, I am persuaded that this is a suitable case for exercise of discretion in favour of the applicants”.

14. I find that the Respondents and the Interested Party will not suffer any prejudice if this application is allowed.

15. In conclusion, I find merit in this application and the same is allowed in terms of prayer 2 and 3 of the Notice of Motion. The cost of this application be borne by the Applicants

It is so ordered.

**DATED, SIGNED AND DELIVERED NAIROBI THIS 30TH DAY OF JUNE 2022.**

**L. KOMINGOI**

.....

**JUDGE**

**In the presence of:-**

Mr. Odhiambo advocate for the Applicants

No appearance for the 1st Respondent

Mr. Kerio advocate for the 2nd Respondent

No appearance for the 3rd Respondent

No appearance for the Interested Party

Steve - Court Assistant

