



REPUBLIC OF KENYA



**Jattan v Galgalo & another (Environment and Land Appeal
72 of 2019) [2022] KEELC 3864 (KLR) (27 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 3864 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL 72 OF 2019**

**CK NZILI, J
JULY 27, 2022**

BETWEEN

HABIBA JATTAN PLAINTIFF

AND

HASSAN GALGALO 1ST DEFENDANT

RUKIA GOLO 2ND DEFENDANT

RULING

1. By an application dated 11.5.2022, the court is asked to grant leave to the applicant to file a notice of appeal out of time. The grounds are contained in the supporting affidavit sworn by Habiba Jattani Guyo on 11.5.2022 namely that at the time the judgment was delivered the applicant lacked finances to instruct counsel to file the appeal on time, he is now threatened with an eviction and requires leave to appeal against the harsh orders contained in the judgment.
2. Despite service of the application upon the respondents, no response has been made to this application.
3. The application is made under Sections 1A, 1B, 3A & 79 of the *Civil Procedure Act* and Order 50 Rule 5 *Civil Procedure Rules*. The power to extend time by this court is governed by Section 7 of the *Appellate Jurisdiction Act* Cap (9).
4. In *Leo Sila Mutiso vs Rose Wangari Mwangi* Court of Appeal No. Nai 255 of 1997 the court held that the decision whether or not to extend time for appealing is essentially discretionary considering the length of the delay, reasons for the delay, chances of the appeal succeeding and the degree of prejudice to the opposite party if the application is allowed.
5. The guiding principles were also reiterated in *Nicholas Kiptoo Arap Korir Salat vs IEBC & 7 others* (2014) eKLR that the extension of time is not a matter of right but depends on the case to case basis including the element of public interest.



6. In *County Executive of Kisumu vs County Government of Kisumu & 8 others* (2017) eKLR the Supreme Court of Kenya held that the whole period of delay should be declared and explained to the satisfaction of the court offered.
7. In this application, the application was filed close to six months after the delivery of judgment. The reasons given for the delay is financial difficulties to instruct counsel to appeal.
8. In *Philomena Mwangeli Nicholas vs National Police Service Commission* (2021) eKLR the court held a party who is impecunious ought to invoke Rule 115 (1) of *Court of Appeal Rules* which allows a party who has demonstrated lack of means to pay the required fees to lodge the appeal without payment of the requisite fees.
9. The court was considering the matter as a full bench after a single ruling of Asike -Makandia J.A dated 3.4.2020 who in a delay of 90 days made a finding that the reason given of financial constraints was not sufficient and that the applicant's impecuniosity could not enable the court exercise its discretion.
10. Guided by the above principles and binding decisions the delay herein is only inordinate, but also the reason given is not satisfactory.
11. In the premises, I find the application lacking merits. The same is dismissed with costs.
Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT

THIS 27TH DAY OF JULY, 2022

In presence of:

C/A: Kananu

Mbutu for appellant

HON. C.K. NZILI

ELC JUDGE

