



**Maina (Suing for and on behalf of his Mother Loise Nyaguthii Maina) v Kobia & 2 others  
(Miscellaneous Application 51 of 2021) [2022] KEELC 2474 (KLR) (20 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 2474 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
MISCELLANEOUS APPLICATION 51 OF 2021**

**CK NZILI, J  
JULY 20, 2022**

**BETWEEN**

**JOY NJERU MAINA (SUING FOR AND ON BEHALF OF HIS MOTHER LOISE  
NYAGUTHII MAINA) ..... APPLICANT**

**AND**

**SOLOMON MURIUNGI KOBIA & ANOTHER ..... 1<sup>ST</sup> RESPONDENT  
LAND ADJUDICATION & SETTLEMENT OFFICER TIGANIA EAST SUB-  
COUNTY TIGANIA EAST SUB-COUNTY & ANOTHER ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**A. The Application**

1. By an application dated December 22, 2021 the court is asked to grant leave to the applicant to file an appeal out of time over a ruling delivered on August 19, 2021 by the Tigania Law Courts in ELC 97 of 2018.
2. The reasons are contained in an affidavit sworn by Job N. Njeru Maina on the even date. It is averred that the ruling was delivered by email, the suit was not heard on merits, delay was occasioned by circumstances beyond the applicant coupled with Covid 19 regulations; the appeal has high chances of success and that there will be no prejudice to the respondent if the application is allowed.
3. The application is opposed through a replying affidavit sworn by Solomon Muriungi Kobia on January 22, 2022 on the grounds is based on falsehoods, review and appeal cannot arise at the same time, its an abuse of court process, litigation must come to an end; there has been inordinate delay; no reasons for the delay have been advanced, there will be prejudice if the application was allowed and that the applicant is an indolent litigant.



## B. Written submissions

4. By written submissions dated March 31, 2022 the applicant says the issues the court has to consider is the length of the delay, reasons thereof, chances of the appeal succeeding and the degree of prejudice likely to be occasioned to the respondent. He relied on *Omar Shurie vs Marian Rashe Yafar, Jaber Mohsen Ali & another vs Priscilla Boit & another* (2014) eKLR.
5. The applicant submits he came to know the outcome of the ruling late hence there was inordinate delay, the appeal is arguable and has high chances of success with no prejudice to be visited upon the respondent.
6. The applicant urges the court to consider the case of *Nkoyai M'Thiringi vs Shadrack Mwendwa Mwiti & another* (2021) eKLR.
7. On the other hand, the 1<sup>st</sup> respondents submit the applicant has failed to demonstrate and good any sufficient cause for not filing the appeal in time. He relies upon the reasoning in *Thuita Mwangi vs Kenya Airways* (2003) eKLR & *Mutiso vs Mwangi* (1997) KLR 630, *Nicholas Kiptoo Arap Salat vs IEBC & 7 others* (2014) eKLR, *County Executive of Kisumu vs County Government of Kisumu & 8 others* (2017) eKLR, *Professor Mwangi S. Kaimenyi vs the Attorney General & another* (2014) eKLR, *Jeniffer Nyambura Kamau vs Humphrey Mbaka Nandi* (2013) eKLR, *Reuben Mwangela M'Itelekwa (Suing as the legal representative of the Estate of M'Itelekwa M'Mucheke Naituri alias M'Itelekwa Mucheke) vs Paul Kigea Nabea & 2 others* (2019) eKLR.
8. The 1<sup>st</sup> respondent therefore urges the court guided by the above cited cases to find the applicant undeserving of the orders sought since the length of delay is inordinate, the reasons given are flimsy, unsubstantiated and unproven and lastly that one cannot apply for review and appeal at the same time.

## C. Determination

9. For an applicant to be entitled to leave to file an appeal out of time there must be basis to the satisfaction of the court why time should be extended, reasons for the delay, the application be brought, timeously and the prejudice likely to be occasioned to the respondent. See *Nicholas Kiptoo Arap Salat vs IEBC* (2015) eKLR.
10. In this matter the impugned ruling while was delivered on August 19, 2021 while this application was filed on December 23, 2021. The applicant says he did not know the directions given over his application after it was filed on May 27, 2021 and only became aware of its outcome on November 20, 2021. Between November 20, 2021 and December 23, 2021 it took the applicant another whole month before lodging the current application. It is said the ruling was delivered via email but the alleged email was not sent.
11. The affidavit in support by B.G Kariuki advocate attached to the application says as much but does not attach the proceedings. Be that as it may, I do not find the delay inordinate. The explanation for the delay is also reasonable under the circumstances given that a party is also entitled to his day in court.
12. I therefore find no prejudice to be occasioned to the respondent under the circumstances if the applicant is given an opportunity to file the appeal out of time. The respondents can also be compensated by way of costs.
13. In the circumstances I allow the application with costs. The appeal to be filed within 14 days from the date hereof.

Orders accordingly. File closed



**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 20<sup>TH</sup> DAY OF JULY, 2022**

**In presence of:**

B.G Kariuki for applicant

M.G Kaume for 1<sup>st</sup> applicant

Kieti for 2<sup>nd</sup> respondent

**HON. C.K. NZILI**

**ELC JUDGE**

