



**Mureithi & another v Mimano (Environment and Land Miscellaneous Application
16 of 2021) [2022] KEELC 12751 (KLR) (28 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 12751 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 16 OF 2021
JO OLOLA, J
SEPTEMBER 28, 2022**

BETWEEN

ROSE MURUTHI MUREITHI 1ST APPLICANT

ESTHER GATHONI NJUNGE 2ND APPLICANT

AND

MOSES CHRYSOSTOM KARUIRU MIMANO RESPONDENT

RULING

1. By this notice of motion dated November 8, 2021 brought pursuant to section 79G of the [Civil Procedure Act](#), Rose Muruthi and Esther Gathoni Njunge pray for an extension of time within which they can file their appeal.
2. The application which is supported by an affidavit sworn by the 1st applicant – Rose Muruthi Mureithi is premised on the grounds:
 - (i) That judgment was delivered in Nyeri MCL & E Case No 3 of 2020 on September 17, 2021;
 - (ii) That an application for the proceedings and Judgment was made on September 20, 2021; and
 - (iii) That it was not until October 18, 2021 when the proceedings were certified ready.
3. The respondent – Moses Chrysostom Karuiru Mimano is opposed to the application. In a replying affidavit sworn on December 16, 2021 but filed herein on January 17, 2022, the respondent avers that the applicants have not advanced any reason to warrant the exercise of this court’s discretion in their favour. The respondent further avers that under Order 42 rule 1 of the [Civil Procedure Rules](#), an appeal to this court is by way of a memorandum of appeal and it was therefore not necessary for the applicants to get the proceedings and judgment to mount an appeal.



4. The respondent avers that the application is not made in good faith and is only calculated to delay his efforts to sell the land which he has owned since 1991. He asserts that the Applicants have been happily married for over 40 years and hence do not live or work on the land and urged the court to dismiss the application.
5. I have carefully perused and considered the application and the response thereto. I have similarly perused and considered the written submissions as filed herein by counsel for the applicants. I was unable to find any submissions filed by the respondent.
6. As the Supreme Court of Kenya stated in *Salat v Independent Electoral & Boundaries Commission & 7 Others* (2014) eKLR:
 - “ 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 ought to exercise the discretion to extend time is a consideration to be made on a case to case basis;
 4. Whether there is reasonable reason for the delay which ought to be explained to the satisfaction of the court;
 5. Whether there would be any prejudice suffered by the respondents if the extension was granted;
 6. Whether the application had been brought without undue delay; and
 7. Whether in certain cases like election petitions, public interest ought to be a consideration for extending time.”
7. In the matter before me, the judgment sought to be appealed was rendered on September 17, 2021. It is the applicants’ case that even though they did apply for certified proceedings and the judgment, the same were not ready until October 18, 2021 by which time the period provided to file an appeal had lapsed by one (1) day.
8. It was not contested that the proceedings and judgment were availed to the applicants one day after the period within which they were to file an appeal had lapsed. While I agree with the respondent that an appeal to this court is by way of filing a memorandum of appeal, I did not think it was entirely true that one did not need the typed proceeding and judgment before filing such a memorandum.
9. In my considered view, the applicants required the proceedings and judgment for their perusal to make an informed decision on the grounds for the appeal. The memorandum of appeal is indeed premised on the evidence adduced before the court as well as the judgment thereof and one could not fault the applicants for waiting for the same in order to make an informed choice on appeal.
10. Arising from the foregoing, I am persuaded that there was merit in the application before me dated November 8, 2021. I allow the same and grant the applicants herein 14 days within which to file and serve the memorandum of appeal.
11. The costs of the application shall abide the outcome of the appeal.



RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AT NYERI THIS 28TH DAY OF SEPTEMBER, 2022.

In the presence of:

Ms Mwangi holding brief for Kiminda for the Applicant

Ms Miriti holding brief for Nderi for the Respondents

Court assistant - Kendi

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J. O. Olola

JUDGE

