



REPUBLIC OF KENYA



KENYA LAW
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**Ndururi v Waithira & 3 others (Environment & Land Case
66 of 2017) [2022] KEELC 14429 (KLR) (26 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 14429 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 66 OF 2017**

BM EBOSO, J

OCTOBER 26, 2022

BETWEEN

PETER PAUL MBURU NDURURI PLAINTIFF

AND

MARGARET WAITHIRA 1ST DEFENDANT

ISAAC MUIRURI MATU 2ND DEFENDANT

COMMISSIONER OF LANDS 3RD DEFENDANT

MUNICIPAL COUNCIL OF THIKA 4TH DEFENDANT

RULING

1. On July 13, 2021, Gacheru J directed that judgment in this suit would be rendered on November 11, 2021. The learned judge was subsequently transferred to Muranga Environment and Land Court station. Arising from the transfer, the learned judge prepared and rendered the judgment on October 8, 2021.
2. While rendering the judgment on October 8, 2021, the learned judge noted as follows:
 - “The judgement was scheduled for November 11, 2021.
 - ii. I am on transfer to another court and brought the delivery of judgment forward. A notice was issued via Kenya Law Report causelist of September 27, 2021.
 - iii. Judgment is delivered in the presence of the above advocate.
 - iv. Notice of delivery of judgment to be issued by the ELC registry.”
3. The coram of the day indicates that Ms Njoka, counsel for the plaintiff, was present. There was no representation on part of the defendants.



4. On or about June 30, 2022, the 1st defendant brought a notice of motion dated June 29, 2022, seeking an order enlarging the time within which to file and serve a notice of appeal relating to the said judgment. The notice of motion was amended on October 4, 2022. The said amended notice of motion is the subject of this ruling. The application is not opposed.
5. I have considered the application together with the supporting affidavit and the brief oral submissions tendered by counsel for the 1st defendant. I have also considered the framework on which the application is anchored. I have similarly considered the principles that guide our courts when exercising jurisdiction to extend time.
6. The criteria upon which our courts exercise jurisdiction to extend time is well-settled. The Supreme Court of Kenya outlined the relevant principles in the case of *Nicholas Kiptoo Arap Korir Salat v The Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR as follows:

“This being the first case in which this court is called upon to consider the principles for extension of time, we derive the following as the under-lying principles that a court should consider in exercise of such discretion:

 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 should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
 4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
 5. Whether there will be any prejudice suffered by the respondents if the extension is granted;
 6. Whether the application has been brought without undue delay; and
 7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”
7. The applicant [1st defendant] has explained that she was not able to file and serve a notice of appeal on time because this case was scheduled for delivery of judgment on November 11, 2021 and her advocates were not notified about the subsequent change. It is the plaintiff’s case that the matter was not listed on November 11, 2022. On enquiry at court registry, her advocates were informed that the Hon Gacheru had been transferred to Muranga and that judgments pending before her were to be delivered on notice. On perusing the causelist at Muranga ELC, they established that the matter was not causelisted on the said day [November 11, 2021]. She contends that her advocates became aware of the judgment on June 21, 2022 when they sent their clerk to Thika ELC Registry to make a follow up on the status of the file. Her case has not been controverted.
8. I have perused the court file and I am satisfied that the applicant has sufficiently explained why she was not able to file and serve a notice of appeal on time. I am also satisfied that section 7 of the *Appellate Jurisdiction Act* grants this court powers to enlarge the time for filing and serving a notice of appeal relating to an intended appeal to the Court of Appeal.



9. The result is that the 1st defendant is granted an enlargement of 10 (ten) days from today within which to file and serve a notice of appeal relating to the judgment rendered in this suit by Gacheru J on October 8, 2021.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 26TH DAY OF OCTOBER 2022

B M EBOSO

JUDGE

In the Presence of: -

Mr Mbabu for the Applicant/1st Defendant

Court Assistant: Sydney

