



Chanjalia & another v Enane & 2 others (Environment and Land Miscellaneous Application E012 of 2022) [2022] KEELC 13792 (KLR) (25 October 2022) (Ruling)

Neutral citation: [2022] KEELC 13792 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E012 OF 2022
DO OHUNGO, J
OCTOBER 25, 2022**

BETWEEN

CHARLES LUCHIVYA CHANJALIA 1ST APPLICANT

AGGREY ANDATI MUSA 2ND APPLICANT

AND

RITA ANDEYO ENANE 1ST RESPONDENT

GRIFFIN ABUYEKA ENANE 2ND RESPONDENT

WEST KENYA SUGAR CO LTD 3RD RESPONDENT

RULING

1. By notice of motion dated March 29, 2022, the applicants seek leave to file an appeal out of time against a ruling delivered on November 13, 2019 by Hon B Ochieng, Chief Magistrate, in Kakamega CM ELC No 29 of 2017. They also seek costs of the application.
2. The application is supported by an affidavit sworn by Charles Luchivya Chanjalia, the first applicant. He deposed that a ruling was delivered against the applicants on November 19, 2019 (what the applicants have annexed is a ruling delivered on November 13, 2019) by the subordinate court in the absence of parties. That upon the delivery of the ruling, the file went missing and that in a bid to trace the missing file, the applicants visited the registry the whole of 2020 whenever the courts were in session during covid-19 and were always informed by the registry that the file had not been released back to the registry by the trial court, which prompted them to complain to the ombudsman in early 2021. That after continuous visits to the registry, the applicants were informed that the file had been found on December 19, 2021 and that is when they learnt that the ruling had been delivered on December 19, 2019 in the absence of parties. The first applicant deposed further that the failure to lodge an appeal on time was not deliberate and hence excusable. That the applicants have a good appeal with high chances of success and as such it is in the interest of justice that the orders sought be granted.



3. Despite service, the respondents never filed any response. The applicants therefore urged the court to allow the application.
4. I have considered the application and the material placed before the court. The sole issue for determination is whether leave to file an appeal out of time should be granted.
5. The Supreme Court stated as follows in the case of in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR, regarding the principles applicable to an application for enlargement of time:

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; ...
6. Applying those guidelines to the present application, the ruling sought to be appealed against was delivered on November 13, 2019 while the present application was filed on March 30, 2022. In terms of section 16A (1) of the *Environment and Land Court Act*, 2011, an appeal from the subordinate court to this court is to be filed within 30 days of delivery of the judgment or ruling. There was thus a delay of over two years and three months. Pursuant to section 16A (2) of the *Environment and Land Court Act*, 2011, the court has jurisdiction to admit an appeal out of time if the appellant satisfies the court that he had a good and sufficient cause for not filing it in time.
 7. The applicants' reasons for the delay are that the ruling was delivered in the absence of parties and that the file was missing. They claim to have written to the ombudsman in early 2021. A perusal of the material availed by the applicants shows that although the applicants claim they were not aware of delivery of the ruling, that the file was missing until December 19, 2021 and that they wrote letters to enquire, no such letters have been annexed save for one received by the Chief Magistrate on March 5, 2021 stating that the file had been traced. No reason has been given as to why the applicants did not file an application for extension of time immediately after March 5, 2021 when they claim the file was traced or even immediately after December 19, 2021 when they claim they learnt of the ruling. As it is, they took about a year after March 5, 2021 and over three months after December 19, 2021 to file the application. The delay was inordinate.
 8. I note that the proposed appeal is against a ruling dismissing an application through which the present applicants sought an interlocutory injunction. The ruling having been delivered almost three years ago, the applicants should have moved with all requisite agility to prosecute the suit pending before



the subordinate court. Interlocutory injunctions are just that: temporary measures awaiting hearing and determination of the main suit. There is something unnerving about plaintiffs who want to keep their suit pending for over three years as they pursue an appeal against the court's refusal to grant an interlocutory injunction.

9. The reasons given for not filing the appeal on time are not satisfactory. The applicants have not laid a basis to warrant exercise of discretion in their favour.
10. In view of the foregoing, I find no merit in notice of motion dated March 29, 2022 and I therefore dismiss the application. Considering that the respondents did not file any response, I make no order as to costs.

DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 25TH DAY OF OCTOBER 2022.

D. O. OHUNGO

JUDGE

Delivered in open court in the presence of:

The first applicant present

The second applicant absent

No appearance for the respondents

Court Assistant: E. Juma

