



**John v BWG (Suing as interim guardian/manager of the Estate of JNG,  
being a person suffering from mental disorder) (Environment & Land Case  
8 of 2018) [2022] KEELC 15043 (KLR) (23 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 15043 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE 8 OF 2018  
CK NZILI, J  
NOVEMBER 23, 2022**

**BETWEEN**

**FRANCIS BUNDI JOHN ..... PLAINTIFF**

**AND**

**BWG ..... RESPONDENT**

**SUING AS INTERIM GUARDIAN/MANAGER OF THE ESTATE OF JNG,  
BEING A PERSON SUFFERING FROM MENTAL DISORDER**

**RULING**

1. This ruling relates to the applications dated June 23, 2022 and August 31, 2022, herein after the 1<sup>st</sup> & 2<sup>nd</sup> applications.
2. In the 1<sup>st</sup> application the court is urged to extend time to lodge an appeal against the orders issued on March 30, 2022. The reasons are contained on the face of the application and the supporting and supplementary affidavits sworn on June 23, 2022 and August 31, 2022 respectively.
3. The application is opposed by the plaintiff through a replying affidavit sworn on June 8, 2022 by Francis Bundi John.
4. In the 2<sup>nd</sup> application, the court is asked to adopt a consent dated June 27, 2022 and filed in court on June 29, 2022 as an order of the court. The application is supported by grounds on the face of it and a supporting affidavit sworn on August 31, 2022 by Bilha Wamuyu Gikunju.
5. The gist of the application is that there was an inadvertent mistake in the initial application where the lawyers for the applicant omitted a prayer for come on record post judgment in line with order 9 rule 9 (b) of the [Civil Procedure Rules, 2010](#), which omission should not be visited upon an innocent litigant.



6. A party seeking for an extension of time to file an appeal out of time has to meet the basic considerations which courts have laid out in several case law. In *Kenya Revenue Authority & 2 others vs Mount Kenya Bottlers & 4 others* Application, 12 (E021) of 2021/2022 (KESC) 3 (KLR) (10 February 2022 (Ruling) the court held that extension of time was an equitable remedy, requiring an exercise of judicial discretion and that equity aided the vigilant and not the indolent.
7. The guiding principles for extension of time have been set out as that an extension of time is not a right of a party but an equitable right only available in deserving cases; the party has the burden of laying a basis to the satisfaction of the court; whether the court should extend time was a discretion to be made on a case to case basis; a reasonable reason for the delay should be stated to the satisfaction of the court; prejudice to be suffered by the respondents must be considered; the application has to be brought without unreasonable delay and lastly public interest must be considered in certain cases. See *Salat Nicholas Kiptoo Arap Korir vs IEBC & 7 others (2014) eKLR*.
8. Applying the above principles to the present applications, on March 30, 2022, the court delivered a ruling in which the applicant sought leave to file and or, replace the defendant, said to be under a mental disorder, the setting aside of the judgment delivered on April 16, 2020 and for temporary prohibitory injunction over LR No Ntima/Igoki/3485.
9. The applicant did not file the instant application until June 29, 2022 through the firm of Robinson Harris Advocates following the filing of a notice of change of advocates.
10. It is crucial for the court to point out that the court in the said ruling granted leave to the guardian/manager to replace the defendant due to mental incapacity and following the guardianship order issued in Nyeri HC Misc E009 of 2021.
11. Additionally, it is also clear from the court file that the applicant through her former advocates on record on April 6, 2022 filed a notice of appeal dated April 4, 2022 against the aforesaid ruling and immediately sought for the proceedings through a letter dated April 21, 2022. The three copies of notice of appeal were immediately received and signed by the deputy registrar of this court for and on behalf of the Court of Appeal registry. The applicant is yet to collect the two copies for further action.
12. Additionally, prior to the applications dated November 25, 2021 the defendant was never represented by any law firm. The firm of Mugane Law LLP did not file any notice of appointment on behalf of the defendant.
13. The applicant has stated in the 1<sup>st</sup> application that even though the notice of appeal was filed time lapsed to file the substantive appeal due to delay in being supplied with typed proceedings.
14. In opposing the application, the plaintiff/respondent says the application is too late as the title has changed by presumption of law after 12 years, reopening of the suit lack basis or merits and that the applicant never interfered with the respondents quite possession of the suit premises.
15. As regards the 2<sup>nd</sup> application, the applicants seek to have the consent to come on record under order 9 rule 9 of the *Civil Procedure Rules, 2010* adopted as an order of this court.
16. The High Court has power under section 7 of the *Appellate Jurisdiction Act, 2012* to extend time to file a notice of appeal, which has expired. Under rule 61 of the *Court of Appeal Rules, 2022*, a party desiring to file an appeal is required under rule 77 thereof, to lodge a notice of appeal with the registrar of the superior court at the place where the decision against which it is desired to appeal within 14 days after the date of that decision. The registrar is required to transmit the copy of the notice of appeal to the registrar of the Court of Appeal within 14 days under rule 63 thereof.



17. Under rule 64 thereof the registrar is required to prepare a record of appeal failure of which he should prepare a certificate of delay. Once the record of appeal is prepared the appellant is supposed to file a memorandum of appeal and serve it upon the registrar within 21 days after service upon him of the record of appeal. Under rules 85 & 86 thereof, a respondent may apply for striking out a notice of appeal and the court may also on its own motion or on application make an order deeming a notice of appeal operational.
18. In this application the applicant has not stated if the notice of appeal filed on April 6, 2022 has become inoperative and or struck out by the Court of Appeal. There is no evidence that the deputy registrar has issued a certificate of delay as contemplated by the rules in which case, the application for extension of time to lodge a memorandum of appeal would be sought at the appellate court. Therefore, the court finds the application lacking merits on that score alone.
19. Coming to the 2<sup>nd</sup> application, the court granted leave to the guardian ad litem/manager to be joined in the proceedings prior to this and as indicated above, the defendant was not represented by any law firm. The guardian thereafter lodged the appeal through the firm of Mugane LLP.
20. Order 9 rule 9 of the *Civil Procedure Rules, 2010* relates to a party who has changed a previous lawyer or wants to act in person after a judgment has been delivered without an order of the court. In this case the defendant had no previous lawyer on record for him. The defendant had never entered appearance prior to and soon after the judgment was entered.
21. Similarly, after leave was granted to be joined as a guardian/manager to the defendant was granted on March 30, 2022, the law firm of Mugane LLP did not file a notice to act for the guardian or manager before this court. Instead, they filed the notice of appeal. So, at the time the notice of change of advocates dated June 27, 2022 was filed the said law firm was not on record for either the defendant or the legal guardian.
22. A notice of appeal does not in my considered view fall under order 9 rules 1, 2, 3 & 7 of the *Civil Procedure Rules, 2010*. It falls squarely under rule 77 of the *Court of Appeal Rules, 2022*. It follows therefore that the consent dated June 20, 2022 and filed in court on June 29, 2022 was invalid, irregular and lacking any legal basis.
23. Therefore, the application dated August 31, 2022 is incurably defective and was made under mistaken believe that the previous law firm was properly on record for the applicant herein.
24. Due to the foregoing reasons, the 1<sup>st</sup> & 2<sup>nd</sup> applications herein lack merits. The same are hereby dismissed with no orders as to costs.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT**

**THIS 23<sup>RD</sup> DAY OF NOVEMBER, 2022**

**In presence of:**

C/A: Zamzam

Gikundi for plaintiff

**HON C K NZILI**

**ELC JUDGE**

