



REPUBLIC OF KENYA



**Murungi v Ngetu (Miscellaneous Application 18 of 2022)  
[2022] KEELC 15368 (KLR) (14 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15368 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
MISCELLANEOUS APPLICATION 18 OF 2022**

**CK NZILI, J**

**DECEMBER 14, 2022**

**BETWEEN**

**LAWRENCE MURUNGI ..... APPLICANT**

**AND**

**BONIFACE NGETU ..... RESPONDENT**

**RULING**

1. The court is asked to extend time within which an appeal can be filed based on the application dated January 4, 2022 and supported by an affidavit of Lawrence Murungi sworn on January 4, 2022. The application is opposed by a replying affidavit of Boniface Ngetu sworn on September 26, 2022.
2. The principles to apply on whether to extend time to prefer appeal were set out in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR. In *Edith Gichungu vs Stephen Njagi* (2014) eKLR the court citing with approval *Kamlesh Mansukhalal vs DPP* (2015) eKLR held that the court exercises the discretion not capriciously or whimsically but must in so doing enhance confidence in the justice system.
3. Applying the foregoing, the reasons for the delay are attributed to be the elderly status of the applicant, inability to be traced to give proper instructions and the wrongful filing of the appeal in the High Court and which was eventually struck out for lack of jurisdiction on October 7, 2021. The respondent is of the view that the delay has been inordinate, not explained sufficiently, there was indolence and that litigation ought to come to an end. The respondent has not however stated what prejudice he would face should the application be allowed.
4. In *Mbogo vs Shah* [1968] EA 93 court held that blunders will keep being made by lawyers be they young or old. The court said that the court is there not to impose discipline. It is there to do justice to the parties in line with Articles 48 & 50 (1) of the *Constitution*.



5. In this application, the lower court suit was dismissed for want of prosecution. Thus, the matter was not heard on merits. The delay to prosecute the suit was for 28 years. Be that as it may, a party has an unfettered right to appeal. The delay in lodging this application is two years.
6. The claim was based on a declaration of trust. The delay though inordinate has been sufficiently explained. As to the prejudice to be occasioned to the respondent, the injustice to be visited upon the applicant if condemned unheard would be more compared to the respondent who may be compensated by way of costs.
7. In the premises I allow the application. The memorandum of appeal shall be filed and served within 14 days from the date hereof. Costs to the respondent in any event. File closed.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 14<sup>TH</sup> DAY OF DECEMBER, 2022**

**In presence of:**

**C/A: Kananu**

**Miss Gachohi for Mutunga for applicant**

**HON. C.K. NZILI**

**ELC JUDGE**

