



**Onyango v Owino (Environment and Land Miscellaneous Application E031 of 2024) [2025] KEELC 492 (KLR) (6 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 492 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E031 OF 2024  
CA OCHIENG, J  
FEBRUARY 6, 2025**

**BETWEEN**

**DONALD ODHIAMBO ONYANGO ..... APPLICANT**

**AND**

**EVELYNE AUMA OWINO ..... RESPONDENT**

**RULING**

1. What is before Court for determination is the Applicant's Notice of Motion application dated the 9<sup>th</sup> August, 2024 brought pursuant to sections 3, 3A & 75 of the Civil Procedure Act and Order 43 & 51 of the Civil Procedure Rules. The Applicant seeks the following Orders:
  1. That the Honourable Court be and is hereby pleased to grant the Applicant/ Intended Appellant in Plaintiff's Notice of Motion application dated 27<sup>th</sup> June, 2022 and filed in Court on 27<sup>th</sup> June, 2022, leave to Appeal to Machakos Environment & Land Court against the entire Ruling and Orders emanating thereunder dated 22<sup>nd</sup> April, 2024 as rendered by Hon. B. Ojoo CM.
  2. That the Honourable Court be and is hereby pleased to grant the Applicant/ Intended Appellant in Respondent's Notice of Motion application dated 11<sup>th</sup> October, 2023 leave to Appeal to Machakos Environment & Land Court against the entire Ruling and Orders emanating thereunder dated 22<sup>nd</sup> April, 2024 as rendered by Hon. B. Ojoo CM.
  3. That the Honourable Court be and is hereby pleased to grant the Applicant/ Intended Appellant in Respondent's Amended Notice of Motion Application dated 19<sup>th</sup> October, 2023 leave to Appeal to leave to Appeal to Machakos Environment & Land Court against the entire Ruling and Orders emanating thereunder dated 22<sup>nd</sup> April, 2024 as rendered by Hon. B. Ojoo CM.
  4. That, the costs of the Application abide the outcome of the Intended Appeal.



2. The application is premised on the grounds on the face of it and the supporting affidavit of BADIA A. FIONA, Advocate where she describes the proceedings in the trial court culminating in the impugned Ruling sought to be appealed from. She contends that the Applicant is aggrieved with the decision of the trial court and seeks to appeal against it. She claims the Applicant's response and submissions were not considered by the trial court in arriving at the impugned decision.
3. The Respondent despite having been duly served failed to oppose the instant application, which was canvassed by way of written submissions.

### **Analysis and Determination**

4. Upon consideration of the instant Notice of Motion application including the supporting affidavit and submissions, the only issue for determination is whether the Applicant should be granted leave to appeal against the Ruling and Orders of Hon. B. Ojoo CM, delivered on 22<sup>nd</sup> April, 2024, in respect to the applications dated the 27<sup>th</sup> June, 2022, 11<sup>th</sup> October, 2023 and 19<sup>th</sup> October, 2023 respectively.
5. The legal provisions governing extension of time to lodge an Appeal to this Court is governed by Section 79 G of the *Civil Procedure Act* which provides that:

“Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order: Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.”

6. From perusal of the proceedings in the lower court including the decision sought to be appealed from, I note at the time of filing the instant Application, the Applicant had delayed in filing the Memorandum of Appeal by One Hundred and Four (104) days. The Applicant explained that he had sought for leave to Appeal against the Ruling delivered on 22<sup>nd</sup> April, 2024 vide his Application dated the 6<sup>th</sup> May, 2024 but the trial Court delivered a brief decision on 28<sup>th</sup> June, 2024 dismissing the said application. Further, he explained that he sought for proceedings, which took awhile to procure.
7. The Court of Appeal in *Sokoro Savings and Credit Co-operative Society Ltd v Mwamburi (Civil Application E032 of 2022) [2023] KECA 381 (KLR)* while dealing with an application for extension of time to file an Appeal stated thus:

“The delay cannot therefore be said to be inordinate in the circumstances. In my view, the explanation tendered by the applicant is plausible and sufficient considering the delay period was only 43 days. Additionally, I note that the delay occasioned was as a fault of the advocate in the conduct of the matter and the applicant cannot be blamed for the delay. Without evidence to the contrary, I am unable to find carelessness in the actions of the applicant hence the explanation offered for the delay is sufficient.”

8. Further, the Supreme Court in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others [2014] eKLR* laid down the principles that govern the exercise of discretion in applications for extension of time and held that:

“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. A party who seeks for extension of time



has the burden of laying a basis to the satisfaction of the court. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;

1. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
  2. Whether there will be any prejudice suffered by the respondents if the extension is granted;
  3. Whether the application has been brought without undue delay; and
  4. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”
9. From the explanation in the supporting affidavit, noting that the instant application was not opposed, I am of the view that the Applicant has demonstrated sufficient cause for delay in filing the Memorandum of Appeal on time. I hence find the reasons provided plausible. I opine that filing an Appeal is a litigant’s Constitutional right and where sufficient cause has been demonstrated, the Court will not block the litigant from the seat of justice. Further, the Respondent has also failed to oppose the instant application to demonstrate what prejudice she stands to suffer if time was extended to enable the Applicant, file a Memorandum of Appeal out of time.
10. Based on the facts before me while relying on the legal provisions I have cited above as well as the decisions quoted, I will extend time for the Applicant to file the Memorandum of Appeal out of time.
11. It is against the foregoing that, I find the Notice of Motion Application dated the 9<sup>th</sup> August, 2024 merited and will allow it. I will proceed to make the follow final Orders: The Applicant be and is hereby granted leave of fourteen (14) days to file and serve the Memorandum of Appeal.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 6<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**CHRISTINE OCHIENG**

**JUDGE**

