



**Gedi v Sora & another (Environment and Land Miscellaneous Application  
E006 of 2024) [2025] KEELC 1092 (KLR) (5 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1092 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E006 OF 2024**

**JO MBOYA, J  
MARCH 5, 2025**

**BETWEEN**

**KHADIJA ESMAIL GEDI ..... APPLICANT**

**AND**

**HABIBA WAKO SORA ..... 1<sup>ST</sup> RESPONDENT**

**ISSACK ISMAIL GEDI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The applicant herein has approached the court vide the application dated the 16/9/2024 and wherein the applicant has sought for the following reliefs;
  - i. That this application be certified as urgent and be heard exparte in the first instance.
  - ii. That this Honourable Court be pleased to issue an order for stay of execution of the Judgment entered and delivered herein against the applicant on 21<sup>st</sup> June, 2024 pending the hearing and determination of this application.
  - iii. That this Honourable Court be pleased to issue an order for stay of execution of the judgment entered and delivered herein against the applicant on 21<sup>st</sup> June, 2024 pending the hearing and determination of the intended appeal.
  - iv. That this Honourable Court be pleased to grant the applicant leave to appeal out time against the judgment delivered by Hon. W.k Cheruyoit(PM) on the 21<sup>st</sup> of June, 2024.
  - v. That costs for this application be provided for.
2. The application beforehand is premised on the various grounds which are contained in the body thereof. In addition, the application is supported by the affidavit sworn by the applicant and to which



- the Applicant has annexed to documents, namely a copy of the judgment and a draft memorandum of appeal.
3. Upon being served with the application beforehand the 2<sup>nd</sup> Respondent filed a Replying Affidavit sworn on the 3/10/2024 and wherein the 2<sup>nd</sup> Respondent has contended that the application by the applicant has been made with unreasonable and inordinate delay. Furthermore, the 2<sup>nd</sup> Respondent has also averred that the applicant has neither accounted for nor explained the delay in filing the instant application.
  4. Additionally, the 2<sup>nd</sup> Respondent has also averred that the suit property which was the subject of the court proceedings at Moyale Law Courts belonged to the deceased husband of the applicant and who was the father of the 2<sup>nd</sup> Respondent. To the extent that the suit property belonged to the deceased, it was contended that the applicant herein did not have any capacity to file the suit before the lower court.
  5. In addition, it was also averred that in so far as the applicant did not have the legal capacity to file the suit in the Lower Court, the entirety of the proceedings were void and thus the court arrived at the correct position.
  6. At any rate, it was averred that to the extent that the Applicant did not have the legal capacity to sue, even the intended appeal for which leave is being sought, will equally be invalid. In this regard, it has been conceded that the intended appeal is misconceived and thus does lie.
  7. The application came up for hearing on the 5<sup>th</sup> of March, 2025 where upon the same was canvassed vide oral submissions. For good measure, the submissions by the parties are on record.
  8. Having considered the application; the response thereto, I come to the conclusion that the determination of the application turns on 3 salient issues, namely; whether the application has been filed with an unreasonable delay and if so, whether the delay has been duly explained; whether the applicant herein has a reasonable/arguable appeal to warrant an order of extension of time; and what orders ought to be issued.
  9. Regarding the first issue, it is important to point that the judgment sought to be appealed against was delivered on the 21<sup>st</sup> of June, 2024 whereas the application was not filed until the 16<sup>th</sup> of September, 2024. To this end there is gainsaying that the application has been filed after a duration of 3 months of thereabout from the date of delivery of the judgment.
  10. Suffices to state that the duration taken by the applicant before the filing of the application was unreasonable. Nevertheless, it is worthy recalling that an applicant who wishes to procure an order of extension of time is obligated to account for and/or explain the reason for the failure to approach the court tenaciously and in accordance with the provisions of law.
  11. With be that as it may, there is no gainsaying that the applicant has neither attempted to nor explained the delay. With this regard the obvious inference to be drawn from the failure to give reasons is because no plausible or cogent, or credible reason is available.
  12. In the absence of plausible or cogent reasons being tendered by the applicant, this court is left in a conundrum and which diverts the court of the requisite discretion to grant the orders sought.
  13. Moreover, the applicant needs to be reminded whenever same [Applicant] is seeking an order for extension of time, then same must justify the basis for exercise of such discretion in her favour.
  14. Instructively it is the reasons, if any given that open the favour and the door of justice to an applicant.



15. Absent reasons and all explanations, an applicant like the one before the court cannot partake of or benefit from the equitable discretion for court [See the Holding of the court in Andrew Kiplagat Chemarango vs Paul Kipkorir Kipet [2018] eKLR; Ngei Vs Kibet [2021] KECA; Paul Musili Wambua Vs the Attorney General [2015] eKLR and Postel Housing Cooperative Society Ltd Vs the Ministry of Sport, Culture and Social Services & Other [2024] KECA, respectively.
16. Next the issue as to whether the applicant has possibly an arguable appeal to warrant the extension of time. It is worthy to underscore that the extension of time for filing an appeal out of time, ought to be granted only where the intended appeal raises some semblance of arguability.
17. Put differently, leave to file an appeal out time ought not be granted where the intended appeal [ex-facie] on the face of it does not raise any legal issue capable of being interrogated by the appellate court.
18. As concerns the intended appeal, it is not lost on this court that the appellant herein had neither taken nor obtained the grant of letters of administration in respect of the estate of her [applicant] deceased husband, who is saying to have been defrauded of the suit property. In the absence of the grant of letter of administration, there is no doubt that the applicant herein did not have the requisite locus standi to commence the suit in the subordinate court. By extension, the applicant herein would not be possessed of the requisite capacity to commence and maintain the intended appeal.
19. To my mind, leave to appeal is not to be granted for the near asking. Pertinently, a party, the applicant not excepted, ought to be granted the only where there is a worthy appeal capable of being canvassed and authenticated [See the decision of the Supreme Court in the case of Mungai Vs Housing Finance Company of Kenya [2017] KESC 47 [at paragraphs 19, 21, 22 and 24 thereof.
20. Additionally, it is important to underscore that without having gotten the requisite grant of letters of administration the intended appeal would suffer the same fate as the suit before the subordinate court. In any event, it suffices to outline the locus standi is a threshold question [See the decision of Court of Appeal in Edith Virginia Wambui Otieno Vs Joash Ougo & Anor [1987] eKLR; Rajesh Prajivan Chudasama Vs Sailesh Prejivan Chudasama [2014] eKLR; True Troustic International Vs Jane Mbeyu & Anor [1991] eKLR where the court underscored that without grant of letters of administration, no party can maintain court proceedings on behalf of the estate of the deceased.
21. Finally, it is also important to point out that whoso ever seeks to procure and obtain favour from a court of law is obligated to approach the court with clean hands and to give plausible reasons for the delay. Notably such an applicant must not attend to mislead the court. However, in this case the applicant stated that same was not able to file the intended appeal within the stipulated timeline because same [Applicant] had not been given a copy of the judgment and proceedings.
22. Nevertheless, form the applicant on annexures, it is evident that the certified copy of the judgment was availed on the 24<sup>th</sup> of June, 2024, which is within 3 days of delivery of the judgment. In this regard, what becomes apparent is that the applicant was attempting to mislead the court as pertains to the reason for the delay in filing the appeal.
23. In my humble view, a party the applicant not excepted, cannot benefit from the equitable discretion of the court by pedaling force hopes. Indeed, court of law must not countenance parties were out to defraud the cause of justice. See Kimani Vs Njoroge [2022] KECA at paragraph 12 and 13 thereof, where the learned Single Judge of the court appeal underscored the necessity to approach the court with clean hands and genuine reasons, which do not leave the court in doubt.



24. I have said enough to demonstrate that the application by the applicant herein does not meet the statutorily threshold for granting extension of time and of leave to appeal out of time. [See the decision of the supreme court in Nicholas Kiptoo Arap Korir Salat Vs IEBC and 7 others [2014] eKLR.

**Final Disposition**

25. Inevitably, I come to the conclusion that the subject application is not only misconceived but same is legally untenable.

26. In the premises, the application dated 16<sup>th</sup> of September, 2024 be and is hereby dismissed with no orders as to costs.

27. It is so ordered.

**DATED SIGNED AND DELIVERED AT ISIOLO ON THE 5<sup>TH</sup> DAY OF MARCH, 2025 IN THE PRESENCE OF;**

Khadija Ismail Gedi.....Applicant in person

Issack Ismail Gedi .....2<sup>nd</sup> Respondent in person

No appearance for the 1<sup>st</sup> Respondent.

**HON. JUSTICE OGUTTU MBOYA**  
**JUDGE**

