



REPUBLIC OF KENYA



KENYA LAW
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**Okoth v Oyugi (Environment and Land Miscellaneous Application
E069 of 2021) [2025] KEELC 3915 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3915 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E069 OF 2021**

MD MWANGI, J

MAY 8, 2025

BETWEEN

JOHN W OJWANG OKOTH APPLICANT

AND

JESSICA ANYANGO OYUGI RESPONDENT

(An application for extension of time to file and serve the notice of appeal and record of appeal respectively out of time in an intended appeal from the judgment of Hon. P. Achieng in Ngong Senior Principal Magistrates Court dated 1st April, 2021) in Senior Principal Magistrate Civil Suit No. 53 of 2019)

RULING

(In respect of the notice of motion dated 18th October 2021 brought under Sections 79G and 95 of the [Civil Procedure Act](#) seeking for leave to file an appeal out of time).

Background

1. The application under consideration is the notice of motion dated 18th October 2021 brought under the provisions of Section 79G and 95 of the [Civil Procedure Act](#), seeking leave to file an appeal out of time, against the judgment of the Ngong Senior Principal Magistrate's Court (Hon. P. Achieng) in Ngong SPMCC 53 of 2019 delivered on 1st April 2021. The application is premised on the grounds on the face of it and on the supporting affidavit of John W. Ojwang Okoth sworn on 18th October 2021.
2. The applicant avers that the delay in filing the appeal arose out of the process of changing advocates and the downscaling of court services owing to the Covid-19 pandemic. He asserts that he has an arguable appeal that raises serious triable issues. He therefore urges the court to allow the application.



Response by the respondent.

3. The response by the respondent was in the form of a replying affidavit sworn on 19th March 2025. The respondent deposes that the application herein was brought 201 days after the impugned judgment was delivered and 171 days after the lapse of the statutory period for lodging an appeal to this court.
4. The respondent affirms that the applicant has not provided any satisfactory or sufficient explanation for the inordinate delay in filing the intended appeal. Further, even though the applicant alleges that the delay was occasioned by the change of advocates, he has not provided any evidence in support of the allegation.
5. The respondent further points out that even after filing this application, the applicant failed to prosecute it diligently demonstrating his indolence. The respondent asserts that she has been highly prejudiced by the delay occasioned by that indolence on the part of the applicant.
6. The respondent urges the court to dismiss the application which he terms as frivolous and vexatious. She avers that the application amounts to an abuse of the process of the court.

Directions by the Court.

7. The sole issue for consideration in this matter is whether the application is merited.

Analysis and determination.

8. Sections 16A of the *ELC Act* and 79G of the *Civil Procedure Act* stipulate that appeals from subordinate courts and local Tribunals shall be filed within a period of 30 days from the date of the decree or order appealed against. The sections however provide that an appeal may be admitted out of time if the appellant satisfies the court that he had a good and sufficient cause for not filing the appeal in time.
9. The appellant's application before me is pegged on the above provisions. The appellant explains that the delay arose out of the process of changing advocates and the downscaling of court services owing to the Covid-19 pandemic. The respondent vehemently opposes the application pointing out that no evidence has been adduced to support the allegations by the applicant.
10. The guiding principles concerning extension of time are well settled. In the case of *Mombasa County Government –vs- Kenya Ferry Services and another* (2019) eKLR, the Supreme Court of Kenya reiterated the principles it had set out earlier in the Nick Salat Case in the following words,

“...it is clear that the discretion to extend time is indeed unfettered. It is incumbent upon the applicant to explain the reasons for delay in making the application for extension and whether there are any extenuating circumstances that can enable the court to exercise its discretion in favour of the applicant.

We derive the following as the underlying principles that a court should consider in exercising such discretion.

- i. 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.
- ii. A party who seeks extension of time has the burden of laying a basis to the satisfaction of the court.
- iii. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case by case basis.



- iv. Where there is a reasonable (cause) for the delay, (the same should be expressed) to the satisfaction of the court.
- v. Whether there will be any prejudice suffered by the respondents if extension is granted.
- vi. Whether the application has been brought without unreasonable delay; and
- vii. Whether in certain cases like election petitions, public interest should be a consideration for extending time.”

- 11. In this case, and as correctly affirmed by the respondent, the application herein was brought 201 days after the impugned judgment was delivered and 171 days after the lapse of the statutory period for lodging an appeal to this court.
- 12. The applicant, as held in the above cited case, had the burden of laying a basis to the satisfaction of the court explaining the otherwise inordinate delay. The applicant’s explanation is wanting; it is inadequate and is not sufficient. It has not offered a reasonable cause for the delay.
- 13. The court is of the view that the respondent has been prejudiced by the inordinate delay not only in the filing of this application but also in the failure to prosecute it expediently. For four years, this application has been pending in this court.
- 14. The applicant is undeserving of the exercise of this court’s discretion to extend time.
- 15. Consequently, the application herein is dismissed with costs to the respondent.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 8TH DAY OF MAY 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Monda for the respondent

N/A by the applicant

Court Assistant: Mpoye

M.D. MWANGI

JUDGE

