



**Njeri v Guchora (Miscellaneous Application E014 of 2023)
[2024] KEELC 588 (KLR) (6 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 588 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
MISCELLANEOUS APPLICATION E014 OF 2023**

BM EBOSO, J

FEBRUARY 6, 2024

BETWEEN

CHARLES NJOROGE NJERI APPLICANT

AND

JOSEPH KARAMO GUCHORA RESPONDENT

RULING

1. Falling for determination in this ruling is the notice of motion dated 14/8/2023, brought by Charles Njoroge Njeri [the applicant]. Through the motion, the applicant seeks an order enlarging the time within which to lodge an appeal against the Judgment rendered by Hon H M Nganga on 4/11/2020 in Gatundu Chief Magistrate Court Civil Case No. 104 of 2019. The application is premised on the grounds outlined in the motion and in the applicant's supporting affidavit sworn on 14/8/2023. It was canvassed through oral submissions. The case of the applicant is that he erroneously filed an appeal in the High Court at Kiambu. The appeal was heard and dismissed by Chigiti J on 1/3/2023 for lack of jurisdiction. The applicant adds that he delayed in bringing the application under consideration because he was ailing.
2. The application is opposed by the respondent through a replying affidavit sworn on 13/9/2023 by Joseph Karamo Guchora. His case is that the applicant filed his memorandum of appeal on 12/10/2020 in the High Court at Kiambu and proceeded to prosecute the appeal to finality, culminating in a Judgment rendered on 1/3/2023. He adds that the said appeal was dismissed with costs to the respondent. He contends that it took the applicant five months to file the present application. The respondent further contends that the Judgment the applicant seeks to appeal was rendered on 4/11/2020, adding that he has been denied the fruits of the Judgment because the applicant is a vexatious litigant who does not believe that litigation should come to an end. The respondent argues that the applicant's ignorance of the court's jurisdiction is not a defence and should not be visited upon him. He is vehemently opposed to enlargement of time.



3. I have considered the application, the response to the application, and the parties' respective oral submissions. I have also considered the relevant legal frameworks and jurisprudence. The single question to be determined in this ruling is whether the application meets the criteria upon which jurisdiction to enlarge time for initiating an appeal is exercised.
4. The relevant criteria was outlined by the Supreme Court of Kenya in *Nicholas Kiptoo Arap Korir Salat v The Independent Electoral and Boundaries Commission & 7 Others* [2014]eKLR as follows:
 1. 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;
 2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
 3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
 4. Whether there is a reasonable reason or the delay. The delay should be explained to the satisfaction of the court;
 5. Whether there will be any prejudice suffered by the respondents if the extension is granted;
 6. Whether the application has been brought without undue delay; and
 7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”
5. The impugned Judgment was rendered on 4/11/2020. Consequently, by dint of the provisions of Section 79G of the *Civil Procedure Act*, limitation period lapsed on 4/11/2020. The explanation advanced by the applicant is that he filed an appeal in the High Court at Kiambu but the appeal was dismissed for want of jurisdiction.
6. Has the applicant satisfied the criteria for enlargement of time? From the evidence that was placed before this court, it does emerge that the ill-fated appeal at the Kiambu High Court was dismissed through a Judgment rendered on 1/3/2023. The application under consideration was brought on 15/8/2023, a period of 5½ months from the date when the ill-fated appeal was dismissed. The impugned Judgment of the lower court was rendered on 4/11/2020, a period of 2 years and over 9 months.
7. The court has examined the X-Ray Request Report Form dated 19/11/2018 together with the other two medical documents that the applicant placed before this court. None of them explains the applicant's inaction from 1/3/2023 to 15/8/2023. Put differently, no satisfactory explanation has been tendered to justify the inaction of 5½ months that run from the date the ill-fated appeal was dismissed by the High Court [1/3/2023] to the date when the present application was filed [15/8/2023]. Whereas the applicant contended that the delay in bringing the application for enlargement of time was occasioned by sickness, he did not place before this court any medical evidence relating to the relevant period.
8. In the absence of a proper explanation for the inaction between 1/3/2023 and 15/8/2023, and given that the impugned Judgment of the lower court was rendered on 4/11/2020, I do not think the applicant has satisfied the criteria for enlargement of time. It is therefore my finding that the application dated 14/8/2023 does not satisfy the criteria for enlargement of time for lodging an appeal.



9. The result is that the application dated 14/8/2023 is rejected for lack of merit. The applicant shall bear costs of the application.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 6TH DAY OF FEBRUARY 2024.

B M EBOSO

JUDGE

In the presence of: -

Ms Kataghai for the Applicant

Mr Gitari for the Respondent

Court Assistant: Hinga

