



**Nduko v Mariari & another (Miscellaneous Application
9 of 2023) [2024] KEELC 1225 (KLR) (6 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1225 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
MISCELLANEOUS APPLICATION 9 OF 2023**

M SILA, J

MARCH 6, 2024

BETWEEN

MARIKO MAISIBA NDUKO APPLICANT

AND

PRISCAH KEMUNTO MARIARI 1ST RESPONDENT

EDWARD MARIARIA 2ND RESPONDENT

RULING

(Application to file an appeal out of time; applicant demonstrating that he was admitted into hospital shortly after delivery of the judgment and could not therefore instruct his counsel to file the appeal within time; good and sufficient cause shown for not filing the appeal within time; application allowed)

1. The application before me is that dated 3 May 2023 vide which the applicant seeks an order for leave to file appeal out of time against a judgment of the Magistrates' Court delivered on 23 January 2023. The reason given for not filing the appeal within time is that the applicant was indisposed and unable to give instructions to his advocate.
2. The respondents have filed Grounds of Opposition to oppose the application. Inter alia it is averred that there is no sufficient cause shown for not filing the appeal out of time and that the applicant has not disclosed whether his intended appeal has high chances of success.
3. I invited counsel to file submissions towards the application but I have only seen the submissions of counsel for the applicant who urged me to allow the application.
4. The time for filing appeals from decisions of the Magistrates' Court to this court is provided for in Section 79G of the *Civil Procedure Act*, Cap 21, Laws of Kenya, which is drawn as follows: -

79G. Time for filing appeals from subordinate courts



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.

5. From the above, it will be seen that one has 30 days to file an appeal, unless he can benefit from the time taken to prepare and deliver a copy of the decree or order. The court however has discretion to admit an appeal out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.
6. In our instance, the applicant avers that he was indisposed and unable to give instructions to his advocate to file the appeal. To his supporting affidavit, he has annexed a discharge sheet from Kisii Teaching and Referral Hospital indicating that he was admitted in that hospital on 30 January 2023 and discharged on 15 February 2023. The judgment herein was delivered on 23 January 2023 meaning that the applicant was hospitalized shortly after delivery of the judgment. His reason that he could not be able to give instructions to his advocate to file the appeal in time appears to me to be plausible.
7. Given the above I am persuaded to allow the application. I direct the applicant to file his Memorandum of Appeal within the next Seven (7) Days and serve it in the usual manner. If none is filed within the specified period, this order will lapse and the applicant will remain shut out from filing an appeal from the impugned decision.
8. I make no orders as to the costs of this application.
9. Orders accordingly.

DATED AND DELIVERED THIS 6 DAY OF MARCH 2024

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

At Kisii

Delivered in the presence of:

No appearance on part of Mr. Anyona for the Applicant

No appearance on part of Mr. Moracha for the Respondent

Court Assistant – David Ochieng

