



**Kamoye (Suing as the administrator of the Estate of the Late Benedicto Turpeso Kamoye) v Kamoye (Environment and Land Miscellaneous Application E004 of 2024) [2024] KEELC 3532 (KLR) (9 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3532 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAROK**  
**ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E004 OF 2024**  
**CG MBOGO, J**  
**APRIL 9, 2024**

**BETWEEN**

**LEMMY OLE KAMOYE (SUING AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE BENEDICTO TURPEO KAMOYE) ..... APPLICANT**

**AND**

**SIMON OLE KAMOYE ..... RESPONDENT**

**RULING**

1. Before this court for determination is the Notice of Motion Application dated 20<sup>th</sup> December, 2023 and filed in court on 1<sup>st</sup> February, 2024. The application is expressed to be brought under Order 50 Rule 6 of the *Civil Procedure Rules*, seeking the following orders: -
  1. That this honourable court be pleased to enlarge time within which the applicant can file his appeal against the whole judgment delivered on 20<sup>th</sup> April, 2023 by Hon. P.L. Shinyada (SRM) in Narok CM ELC No. 147 of 2018, Simon Ole Kamoye versus Lemmy Ole Kamoye (Sued as the administrator of the estate of the late Benedicto Turpeso Kamoye).
  2. That the costs of their application do abide the outcome of the intended appeal.
2. The application is premised on the grounds inter alia that the judgment was written, delivered and signed by a judicial officer who did not hear any part of the case at all, and who did not notify the parties of the date of the delivery of the judgment.
3. The application is supported by the affidavit of the applicant sworn on even date. The applicant deposed that this matter was fully heard by Hon Wakahiu and that on 6<sup>th</sup> December, 2023, his advocate sought to obtain a copy of the judgment and all along, the advocates for both parties were waiting for a notice to issue for the day the judgment would be delivered.



4. The applicant deposed that all the proceedings in this matter were taken by Hon. Wakahiu (CM) who retired, and no notice of delivery of judgment was ever issued to his advocate.  
He went on to depose that no directions were taken to the effect that another magistrate would write and deliver judgment in the matter in place of the trial court.
5. The applicant deposed that he is desirous of executing his right of appeal against the whole judgment delivered by the court on 20<sup>th</sup> April, 2023 and that the respondent will not be prejudiced if the prayers sought are granted.
6. The application was opposed by the replying affidavit of the respondent sworn on 14<sup>th</sup> February, 2024. The respondent deposed that the application lacks merit because the applicant has not explained the delay in bringing forth the instant application if at all he learnt of the same on 7<sup>th</sup> December, 2023.
7. The respondent deposed that the application is seeking to delay the finalization of litigation of this matter and to defeat justice. He went on to depose that the advocates for the parties appeared before the court on 13<sup>th</sup> November, 2022, 15<sup>th</sup> December, 2022 and 24<sup>th</sup> January, 2023 where directions were taken that the matter proceeds from the point reached. He further deposed that a judgment notice was served by the court, and neither counsel appeared before the court when the judgment was delivered.
8. The respondent further deposed that he followed up with his advocate on the delivery of the judgment and that he obtained a copy of the judgment from the court. That if indeed the applicant was interested in the outcome, he would have followed up on the same. He also deposed that the process of implementation of the orders of the court had already commenced, and the delay will definitely prejudice him.
9. On 21<sup>st</sup> February, 2024, this court gave directions as to the disposal of the application which was vide written submissions. None of the parties filed their written submissions. Be that as it may, I have analyzed and considered the application, the replying affidavit thereof and, in my view, the issue for determination is whether this court ought to enlarge time to allow the applicant file his appeal out of time.
10. Section 79G of the [Civil Procedure Act](#) 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.”
11. Further, Section 95 of the [Civil Procedure Act](#) provides as follows: -

“Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Act, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.”
12. Likewise, Order 50 Rule 6 of the [Civil Procedure Rules](#) stipulates that:

“Where a limited time has been fixed for doing any act or taking any proceedings under these rules, or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such



enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed: Provided that the costs of any application to extend such time and of any order made thereon shall be borne by the parties making such application, unless the court orders otherwise.”

13. I have perused a copy of the judgment said to be delivered on 20<sup>th</sup> April, 2023 by Hon. Shinyada attached to the applicant’s supporting affidavit. On the last page of the judgment, it is indicated that both parties as well as their advocates were absent on the date the judgment was delivered. The court noted that the advocates were duly notified vide the notice of delivery of judgment dated 14<sup>th</sup> April, 2023.
14. The respondent annexed a copy of the court proceedings from 19<sup>th</sup> July, 2022 to 20<sup>th</sup> April, 2023. This matter was mentioned before Hon. S. Mungai on 2<sup>nd</sup> August, 2022 and both parties were absent. The matter was listed for mention on 27<sup>th</sup> September, 2022 and on 13<sup>th</sup> November, 2022 respectively. On 13<sup>th</sup> November, 2022, parties appeared before Hon. Shinyada through their advocates. Mr. Kariuki held brief for Mr. Karanja for the applicant. On this date, the counsel for the respondent informed the court that they had filed their written submissions and wished that the matter would proceed from where it had reached. This proposal seemed to be agreeable to Mr. Kariuki who informed the court that they had also filed their written submissions and sought to have the case proceed from where it had reached.
15. The court directed that the proceedings be typed, and issued a mention on 15<sup>th</sup> December, 2022. On 15<sup>th</sup> December, 2022, the advocates for the parties were both present and a further mention date was slated for 24<sup>th</sup> January, 2023 to confirm whether the proceedings had been typed.
16. On 24<sup>th</sup> January, 2023, the advocates for the parties were both present. The trial court informed the parties that the proceedings were typed and proceeded to issue a date for judgment on 28<sup>th</sup> February, 2023. From the documents relied upon by the parties, this court is unable to tell what transpired on 28<sup>th</sup> February, 2023. However, the next time the matter was before court was on the date when the judgment was delivered being on 20<sup>th</sup> April, 2023.
17. From the above, the applicant was represented by the counsel who held brief for Mr. Karanja when the matter was before Hon. Shinyada. The parties also agreed that the matter do proceed from where it had reached and, in this case, the matter was due for judgment. The applicant has not explained what transpired before this court on 28<sup>th</sup> February, 2023 despite their court appearance on 24<sup>th</sup> January, 2023 when the matter was given a date for judgment.
18. In my view, the applicant, through his counsel went to slumber and did not take steps to follow up on his case. I do note that trial court was satisfied that parties through their advocates were duly notified of the notice of delivery of judgment. This court cannot at this stage exercise its discretion for the reasons that the applicant has not explained the steps taken since the parties last appeared before court on 24<sup>th</sup> January, 2023. The court’s finding is that the applicant is not deserving of the orders sought.
19. Arising from the above, the notice of motion dated 20<sup>th</sup> December, 2023 and filed in court on 1<sup>st</sup> February, 2024 lacks merit and the same is hereby dismissed. Each party to bear its own costs. Orders accordingly.

**DATED, SIGNED & DELIVERED VIA EMAIL THIS 9<sup>TH</sup> DAY OF APRIL, 2024.**

**HON. MBOGO C.G.**

**JUDGE**



**9/04/2024.**

In the presence of;

Mr. Meyoki Pere – C. A

