



Jesus Celebration Ministry International Registered Trustees (Suing Through its Registered Trustee George Omondi Makokha) & another v Mbai & 9 others (Environment and Land Miscellaneous Application E021 of 2024) [2024] KEELC 5288 (KLR) (10 July 2024) (Ruling)

Neutral citation: [2024] KEELC 5288 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E021 OF 2024**

**CK NZILI, J
JULY 10, 2024**

BETWEEN

**JESUS CELEBRATION MINISTRY INTERNATIONAL REGISTERED TRUSTEES (SUING THROUGH ITS REGISTERED TRUSTEE GEORGE OMONDI MAKOKHA) 1ST APPLICANT
GEORGE OMONDI MAKOKHA 2ND APPLICANT**

AND

**WILFRED MBAI 1ST RESPONDENT
JACOB KINYUA 2ND RESPONDENT
JOSHUA OGUTU 3RD RESPONDENT
RAEL MUKONO 4TH RESPONDENT
JOSEPH MUTUA 5TH RESPONDENT
MUUNDA MWANGANGI 6TH RESPONDENT
PATRICK GITONGA 7TH RESPONDENT
ERICK MWANDAWIRO 8TH RESPONDENT
THE LAND REGISTRAR -MERU NORTH 9TH RESPONDENT
THE HONORABLE ATTORNEY GENERAL 10TH RESPONDENT**

RULING

1. The court is asked to extend time for the applicants to file and serve a memorandum of appeal out of time, through an application dated 22.5.2024. The grounds are that;- the delay was occasioned by



- the fact that the judiciary e-filing portal was not working correctly from 15.5.2024 to 18.5.2024; the delay is not inordinate; the intended appeal is arguable and that no prejudice will be occasioned on the respondents since the matter had proceeded *ex parte* at the lower court. In the affidavit sworn by George Omondi dated 22.5.2024, the impugned ruling delivered on 18.4. 2024 is annexed as JNN1, while the draft memorandum of appeal is annexed as JNN2.
2. The application is opposed through an affidavit by Wilfred Mbai, the 1st respondent, sworn on 11.6.2024, on his own behalf and that of his co-respondents. He terms the application as frivolous and an abuse of the court process, since the ruling was sound and of substance. Additionally, it is averred that ELC No. E006 of 2023 was a disguised appeal on the decision of the 9th respondent, which ought to have been filed through judicial review proceedings. The respondents term the delay as unexplained; there is no sound or sufficient cause for not filing the appeal in good time; the alleged downtime on the judiciary system was way past the time of appealing.
 3. The 9th and 10th respondents oppose the application through an affidavit sworn on 10.6.2024 by E. Wairimu. She avers that the applicants purport to have been unable to file the memorandum of appeal during a time when there was a system downtime, yet the same is dated 22.5.2024. It is further, averred that the two respondents had duly complied at the lower court by filing a memorandum of appearance, statement of defence, list of documents, a preliminary objection, and written submissions, contrary to the allegations that the matter proceeded *ex parte*. The two respondents aver that the applicants were indolent and that it would be detrimental to them if the application is allowed.
 4. The applicants rely on written submissions dated 10.6.2024 that, in the interest of justice, the court should allow the applicant to file the appeal out of time. Reliance was placed on *Thuita Mwangi vs Kenya Airways Limited* (2003) eKLR, on the grounds to be considered before time can be extended. It is also submitted that the delay was only for four days and that it is not inordinate since the reason for the delay was that there was a press statement on the hitch on the judiciary portal.
 5. Extension of time to file an appeal is governed by Section 79G of the *Civil Procedure Act*. It provides that the intended appeal should be filed within 30 days. Admission of an appeal out of time is at the discretion of the court, which has to consider the length of delay, reasons for the delay, prejudice to be visited on the opposite party, as well as the interest of justice.
 6. As held in *Nicholas Kiptoo Arap Salat vs IEBC & others* (2014) eKLR, extension of time is not a right of a party. It is to be granted only to deserving cases at the court's discretion. An applicant has to give reasons for the delay, an explanation for the delay, prejudice to be occasioned on the other party, the nature of the matter and that the application is filed without delay.
 7. In this matter, the ruling sought to be appealed against was made on 18.4.2024 and the memorandum of appeal is dated 22.5.2024. The applicants allege that they tried to file the appeal between 15.5.2024 and 18.5.2024, but the judiciary e-filing system was down. It beats logic how an appeal was being filed before it was drafted. Be that as it may, the applicants have attached a notice on the system outage dated 21.5.2024. This was way out of time to file the appeal. The applicants are, therefore not being truthful on the explanation for the delay. No evidence has been attached to show efforts made to try and file the appeal through the court station's emails as directed in the notice.
 8. Equity aids the vigilant. The applicants have been indolent and slept on their right of appeal only to wake up at the 11th hour. A delay of even a day may be inordinate, depending on the circumstances. The application was filed on 28.5.2024, which delay is unreasonable. Further, no sufficient reasons have been given for the court to extend the time as held in *Rosemary Makena Mwangi & another v Mwangi Harun & another* (2008) eKLR. The system downtime is just a scapegoat for the applicants'



inaction since there was an option for filing, which they chose not to follow. The court is also required to consider if it is in the interest of justice to allow the extension of time.

9. The ruling sought to be appealed against relates to a preliminary objection by dint of Section 86(1) of the *Land Registration Act*, Rule 8 of *the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (Mutunga Rules 2013)* and Section 8(2) of the *Magistrates Act*. Having carefully looked at the ruling and the pleadings attached to the replying affidavit, I think the issues raised in the intended appeal are arguable but not idle. The suit was struck out at the infancy stage. On that score alone, I find the application with merits. The intended appeal shall be filed within seven days from the date hereof. There will be no order as to costs.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 10TH DAY OF JULY, 2024

HON. C K NZILI

JUDGE

In presence of

C.A Kananu/Mukami

No appearance

