



REPUBLIC OF KENYA



**Wanjiru v Mugah & 8 others (Environment and Land Miscellaneous
Application E008 of 2024) [2024] KEELC 5092 (KLR) (4 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5092 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E008 OF 2024**

CK YANO, J

JULY 4, 2024

BETWEEN

VERONICAH WANJIRU APPLICANT

AND

PAUL MURUNGAH MUGAH 1ST RESPONDENT

COLLINS MUTWIRI 2ND RESPONDENT

JOSEPH KOOME MUGA 3RD RESPONDENT

KINUTHIA GATOTO 4TH RESPONDENT

CATHERINE GAKII STEPHEN 5TH RESPONDENT

ANN NJOGU WAMBUI 6TH RESPONDENT

JULIUS KIMATHI KINYURU 7TH RESPONDENT

IRENE NKATHA 8TH RESPONDENT

JOYCE NTIBUKA KIAMBATI 9TH RESPONDENT

RULING

1. The applicant moved this court vide the Notice of Motion application dated 5th February, 2024 seeking an order to allow the firm of Maitai Rimita & Co. Advocates to come on record for the applicant after judgment in place of Basilio Gitonga, Murithi & Co. Advocates and for leave to file appeal out of time against the judgment/decree of Hon. J.M Njoroge C.M dated 26th June 2023 in Meru C.M ELC No. E035 of 2022.
2. The application is brought under Section 1A, 1B, 3A and 79G of the [Civil Procedure Act](#) and Order 51 Rule 1 of the [Civil Procedure Rules](#) and all enabling provisions of the [Environment and Land Court](#)



Act and is supported by the affidavit of the applicant sworn on 5th February, 2024 and is premised on the grounds that the applicant's delay in filing the appeal in time was caused by the court due to its heavy workload, that the applicant has good grounds of appeal both in points of law and fact, and that the magistrate's decision is against the weight of the evidence on record.

3. In her affidavit in support of the application, the applicant has deposed inter alia, that the trial court delivered its judgment on 26th June 2023. She has annexed a copy of the said judgment Marked "VW1". The applicant avers that she is aggrieved by the said judgment and wishes to appeal against the same, but she is out of time. The applicant states that her intended appeal has good grounds with high chances of success. A draft memorandum of appeal marked "VW2" has been annexed.
4. The applicant has deposed that the delay in filing was caused by the court due to its heavy workload. That she requested for the judgment which took time being typed and the applicant was issued with the same on 4th January, 2024 which was six months later, hence this application.
5. The applicant avers that due to her old age, she has been in and out of hospital due to illness associated with old age. That the failure to file appeal in time was caused by the court's failure to prepare the record on time (sic). That it is for the interest of justice that this application be allowed as prayed.
6. The 3rd respondent filed a replying affidavit dated 4th April 2024 supporting the application.
7. In opposing the application, the other respondents, save for the 3rd respondent, filed a replying affidavit sworn by Paul Murungah Mugah, the 1st respondent on 1st March 2024. It is the respondents' contention that the application is an afterthought, full of falsehoods and only meant to waste the court's precious time. That the reasons for the delay have not been satisfactorily explained by the applicant to the court. That the memorandum of appeal annexed by the applicant herein does not raise any triable issues and therefore the intended appeal has no chances of success and is only meant to delay the enjoyment of the fruits of judgment by the respondents and is an abuse of the court process.
8. The respondents pointed out that the applicant has not put in any supporting documents to prove that indeed she had requested and followed up for the judgment. That despite obtaining the judgment on 4th January 2024, the applicant has not explained why she took a whole month to file the current application. That the annexures referred to in paragraph 7 of the supporting affidavit are full of falsehoods as the applicant had not been admitted in Karen Hospital in June 2023, adding that the said hospital does not have an inpatient department at Meru. The respondents accuse the applicant for being dishonest. The respondents want the application dismissed for being a non-starter.
9. The application was canvassed by way of written submissions. The applicant filed her submissions dated 3rd April 2024 through the firm of Maitai Rimita & Co. Advocates while the 3rd respondent in person filed his submissions dated 4th April 2024. The court has not seen any submissions filed by the other respondents. The court has read and considered the submissions filed by the applicant and the 3rd respondent and I need not reproduce the same in this ruling.
10. I have considered the application herein, the responses and the submissions filed. The issues for determination are whether the firm of Maitai Rimita & Co. Advocates should be granted leave to come on record for the applicant in place of M/s Basilio Gitonga, Murithi & Co. Advocates and whether leave to file appeal out of time should be granted or not.
11. Order 9 Rule 9 of the Civil Procedure Rules provides as follows;
 - "9. When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate after judgment has been passed, such



change or intention to act in person shall not be effected without an order of the court-;

- a) Upon an application with notice to all the parties, or
- b) Upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be”

12. I have perused the application herein. The same was served upon all the parties, including the firm of Basilio Gitonga, Murithi & Co. Advocates. The prayer for leave to allow the firm of Maitai Rimita & Co. Advocates to come on record for the applicant after judgment in place of Basilio Gitonga, Murithi & Co. Advocates has not been opposed by any of the parties, including the firm of Basilio Gitonga, Murithi & Co. Advocates. I therefore grant leave to the firm of Maitai Rimita & Co. Advocates to come on record for the applicant in place of Basilio Gitonga, Murithi Advocates.
13. The next issue is whether or not leave should be granted to the applicant to file appeal out of time against the judgment of the lower court delivered on 26th June 2023 in Meru CM ELC no. E035 of 2022.
14. Under Section 79G of the *Civil Procedure Act*, appeals from the decisions of the lower court to the High Court (and this court) must be filed within a period of 30 days from the date of the decree or order from which the appeal lies. The proviso to the said section however allows for extension of time to appeal where good and sufficient cause has been shown. As such, extension of time within which an appeal ought to be filed is a matter of Judicial discretion. An applicant seeking leave to file appeal out of time must show that he/she has a good cause for doing so.
15. The principles upon which the court should exercise the said discretion and grant leave out of time are now well settled. The court ought to consider the length of delay, the reason for the delay, the chances of the appeal succeeding if the application is granted and the degree of prejudice to the respondent if the application is granted (see *Leo Sila Mutiso V Rose Hellen Wangari Mwangi*, Civil application No. NAI 255 of 1997 and *Thuitha Mwangi Vs Kenya Airways Limited* [2003] eKLR). The question therefore is whether taking into account the facts of the instant case, the applicant has satisfied the said conditions.
16. As for the length of delay, the judgment of the subordinate court was delivered on 26th June 2023. The instant application was filed on 12th February, 2024. The 30 days period within which the applicant ought to have filed the appeal lapsed on 27th July 2023. The application has been brought after a period of over six months. It is my considered view that the application was brought after unreasonable delay.
17. In justifying the delay, the applicant stated that the same was caused by the court due to its heavy workload. I note, however, that there is no evidence to back the alleged heavy workload. Further, the applicant has not shown any evidence to indicate when she applied to be supplied copies of the typed proceedings and judgment, if at all. I further note that the judgment was certified on 4th January, 2024. The applicant has not even explained why she did not file the application until 12th February, 2024 which was a period of over one month since the judgment was certified. In addition, the documents exhibited by the applicant relate to the year 2021 long before the judgment was delivered by the lower court. Further, the draft memorandum of appeal relates to a decision in Tigania Principal Magistrate’s court delivered on 17th January, 2019 by Hon. Sogomo in PMCC No. 14 of 2018 formerly Meru ELC No. 150 of 2014. The application herein seeks to appeal against Meru CM ELC No. E035 of 2022 and not Tigania PMCC NO. 14 of 2018 (formerly Meru ELC No. 150 of 2014). It is therefore my finding that the reason given for the delay was not well explained, is farfetched and frivolous, and the delay



was quite inordinate. As for the chances of the appeal succeeding as alleged by the applicant, the court cannot make a determination on the same since the draft Memorandum of appeal annexed relates to a totally different case.

18. For the above reasons, it is my considered opinion that the applicant herein has not satisfied the conditions for granting of leave to appeal out of time.

Consequently, I make the following orders;

1. Leave is granted to the firm of Maitai Rimita & Co advocates to come on record for the applicant in place of M/S Basilio Gitonga, Murithi & Associates Advocates.
2. The prayer for leave to appeal out of time against the judgment in Meru CM ELC No. E035 of 2022 delivered on 26th June 2023 is dismissed.
3. Considering that the application has succeeded partly, I order that parties bear their own costs of the application.

19. It is so ordered.

DATED, SIGNED AND DELIVERED AT MERU THIS 4TH DAY OF JULY, 2024

In the presence of

Court Assistant – Tupet

Mrs. Mutegi for 1st, 2nd, 4th, 5th, 6th, 7th, 8th and 9th respondents

Muthamia holding brief for Ms Rimita for applicant

C.K YANO

JUDGE

