



REPUBLIC OF KENYA



**KENYA LAW**

THE NATIONAL COUNCIL FOR LAW REPORTING

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**Wanjiru v Korir (Environment and Land Miscellaneous Application  
52 of 2022) [2023] KEELC 642 (KLR) (9 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 642 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 52 OF 2022  
A OMBWAYO, J  
FEBRUARY 9, 2023**

**BETWEEN**

**BETTY C. WANJIRU ..... APPLICANT**

**AND**

**WESLEY KIPROTICH KORIR ..... RESPONDENT**

**RULING**

**Brief Facts**

1. The Applicant filed the instant application dated 7<sup>th</sup> December, 2022 seeking the following orders:
  1. Spent.
  2. That this Honourable court be pleased to enlarge the time within which the Applicant is to file an appeal against the judgment and decree of Hon. A. E. A Nyaloti, Chief Resident Magistrate, delivered on 27<sup>th</sup> October, 2022 in Nakuru CM ELC No. 365 of 2018; Betty C. Wanjiru Murage V Wesley Kiprotich Korir.
  3. That the costs of this application be provided for.
2. The Application was based on grounds set out and supported by the Affidavit of Betty C. Wanjiru Murage sworn on 7<sup>th</sup> December, 2022.
3. She stated that she is the Plaintiff in Nakuru CM ELC No. 365 of 2018 and that her advocates Ms. Elizabeth Wangare & Company Advocates failed to promptly inform her of the said judgment.
4. That on 30<sup>th</sup> November, 2022 she visited the advocate's office and was informed that the office had sent a representative to deliver a copy of the judgment to her.



5. It was further stated that on 1<sup>st</sup> December, 2022 she received a letter forwarding a copy of the judgment. That as advised by her advocates, the time within which she was to lodge an appeal lapsed sometime on 26<sup>th</sup> November, 2022.
6. She stated that by the time she was notified of the judgment vide a letter dated 30<sup>th</sup> November, 2022, the time for lodging an appeal had lapsed. She added that she wishes to appeal against the decision but cannot do so without an order enlarging the time to file the appeal.
7. The Applicant stated that the delay in lodging an appeal is not inordinate and it would be in the interest of justice that she be allowed to file the appeal out of time. She further stated that no prejudice shall be occasioned to the Respondent if the orders sought are granted as the Respondent never participated in the lower court proceedings.
8. In conclusion, the Applicant urges the court to allow the application to file appeal out of time.

### **Respondent**

9. The Respondent did not file any response to the application.

### **Submissions**

10. Both parties did not file any submissions.

### **Analysis and Determination**

11. This court has looked into the application and is of the view that the main issue for determination is whether the Applicant should be granted time extension to file her appeal out of time.
12. The Applicant's instant appeal is premised on Sections 79G of the *Civil Procedure Act* which provide for filing of appeals from the subordinate courts and for enlargement of time respectively. Section 79G provides as follows:

“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 a good and sufficient cause for not filing the appeal in time.” [Emphasis mine].

13. The Supreme court of Kenya sitting at Kisumu in the case of *County Executive of Kisumu vs County Government of Kisumu & others* [2017] eKLR while relying to its decision in the case of *Nicholas Kiptoo Arap Korir Salat vs IEBC & 7 others* Application No. 16 of 2014 [2014] eKLR the Hon. Judges reiterated the considerations to be made in such a case to be 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 for 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.”
14. The Applicant had a duty to explain to this court why she did not file her appeal before the 30 days after judgment had been delivered on 27<sup>th</sup> October, 2022. According to the Applicant she had acted diligently upon learning of the delivery of the judgment from her advocates who failed to promptly inform her. She contends that she was notified of the judgment on 30<sup>th</sup> November, 2022. This application was filed on 13<sup>th</sup> December, 2022.
15. This court has considered the amount of delay from 27<sup>th</sup> October, 2022 to the filing of the application which was about 1 month and 2 weeks. In the case of *Almas Hauliers Ltd v Abdulnasir Abukar Hassan* [2017] eKLR the court held that a delay of four months was not found to be inordinate.
1. This court therefore finds that the delay by the Applicant is not so inordinate as to make this court deny her the opportunity to challenge the judgment by the trial court. In the upshot, the application dated 7<sup>th</sup> December, 2022 is hereby allowed and time for filing the appeal is enlarged, the Applicant is to file an appeal against the judgment and decree of Hon. A. E. A Nyaloti, Chief Resident Magistrate, delivered on 27<sup>th</sup> October, 2022 in Nakuru CM ELC No. 365 of 2018; Betty C. Wanjiru Murage V Wesley Kiprotich Korir within 30 days. Each party shall bear their costs in the application.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 9<sup>TH</sup> DAY OF FEBRUARY 2023.**

**A O OMBWAYO**

**JUDGE**

