



**Kiama & 4 others v Njenga (Environment and Land Miscellaneous Application E002 of 2023) [2023] KEELC 19956 (KLR) (19 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 19956 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E002 OF 2023  
JG KEMEI, J  
SEPTEMBER 19, 2023**

**BETWEEN**

**ANN KIAMA ..... 1<sup>ST</sup> APPLICANT  
GITAU KIMOTHO ..... 2<sup>ND</sup> APPLICANT  
JOHN NGANGA ..... 3<sup>RD</sup> APPLICANT  
AGNES WAMBUI ..... 4<sup>TH</sup> APPLICANT  
ROSEMARY WAMUYU ..... 5<sup>TH</sup> APPLICANT**

**AND**

**LAWRENCE KINYANJUI NJENGA ..... RESPONDENT**

**RULING**

1. The applicant filed the application dated January 6, 2023 seeking leave to file an appeal out of time and that costs of the application be provided.
2. The application is supported by the grounds annexed thereto and the supporting affidavit of John Nganga, the 3<sup>rd</sup> respondent where he deponed that judgment in the trial court was delivered on the November 7, 2022 and that he was unable to obtain the same from the registry until the January 3, 2023 despite several requests from the registry to be supplied with the same. That by the time the judgment was released to him time to file the appeal was already spent.
3. The application is opposed by the respondent *vide* his replying affidavit sworn on the April 21, 2023. He deponed that judgment was delivered on the November 7, 2022 in ELC No 114 of 2021. On the reason advanced by the applicant for the failure to file the appeal within time, the respondent averred that the judgment is not one of the documents required for one to file a notice of appeal. In any event he argued that his advocate applied for the judgment on the November 10, 2022 and was supplied with



the same on the November 11, 2022 a sign that the Judgment was readily available as early as the 11<sup>th</sup> of November and may be earlier.

4. The respondent contends that the applicant has not tabled sufficient reason before the court to explain the delay in filing the appeal within the stipulated time.
5. Relying on the decision of the court in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 6 others* [2013] eKLR the respondent urged the court to dismiss the application.
6. Parties elected to file written submissions which I have read and considered.
7. The key issue is whether the application is merited.
8. Section 79G of the *Civil Procedure Act* 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 good and sufficient cause for not filing the appeal in time.”

9. In the case of *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* [2013] eKLR the applicable threshold was laid by the apex court as follows; 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; a party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court; whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis; whether there is reasonable reason for the delay; the delay should be explained to the satisfaction of the court; whether there will be any prejudice suffered by the respondent if the extension is granted; whether the application has been brought without undue delay; and whether uncertain cases, like election petition, public interests should be a consideration for extending time.
10. I have considered the application and the reason advanced for the delay in filing the appeal and I find none. I agree with the respondent that one need not annex the judgment to the notice of appeal. It forms part of the record of appeal. I find that there is therefore no reason advanced by the applicant to warrant this court to exercise discretion in their favour. I say so because the applicants have not even bothered to show when they indeed received the judgment if any as none was annexed.
11. For that reason the application fails.
12. It is dismissed with costs in favour of the respondent.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 19<sup>TH</sup> DAY OF SEPTEMBER, 2023 VIA MICROSOFT TEAMS.**

**J G KEMEI**

**JUDGE**

**Delivered online in the presence of;**

1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Applicants – Absent but served



Ms. Nganga for Respondent  
Court Assistant – Phyllis & Lilian

