



**Thuku & 2 others (Suing as officials of Uzima Court Welfare Group) v Muli (Environment and Land Miscellaneous Application E005 of 2023) [2023] KEELC 21443 (KLR) (9 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21443 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E005 OF 2023**

**JG KEMEL, J**

**NOVEMBER 9, 2023**

**BETWEEN**

**STEPHEN MUTHIMA THUKU ..... 1<sup>ST</sup> APPLICANT  
JOSEPH NDUNGU MWANIKI (SECRETARY) ..... 2<sup>ND</sup> APPLICANT  
JULIUS MUCHINA (TREASURER) ..... 3<sup>RD</sup> APPLICANT  
SUING AS OFFICIALS OF UZIMA COURT WELFARE GROUP**

**AND**

**SAMUEL SOMBA MULI ..... RESPONDENT**

**RULING**

1. The subject of this ruling is the applicant's notice of motion dated 11/9/2023 filed pursuant to sections 1A and 3A of the *Civil Procedure Act* and order 42 rule 6 and order 51 rule 1 of the *Civil Procedure Rules*. In the main, the Applicants seek leave to appeal out of time against the Ruling of the Hon. P. Mutua, Senior Principal Magistrate delivered on 26/7/2023 in Thika MCL&E Case No. E048 of 2023 and temporary injunction against the Respondent from dealing with parcel of land known as LR No. 17564/1247 located in Uzima court in Juja Sub-County.
2. The application is based on the grounds on the face of it and supporting affidavit of even date of Stephen Muthima Thuku, the Chairman of the applicants. He deponed that the Applicants were defendants in the trial court and are dissatisfied with the impugned Ruling dated 26/7/2023 said to be annexed as S2. That according to their draft Memorandum of Appeal – S3 -they have a strong arguable appeal hence the Application. He attributes the delay to file the appeal out of time to the Applicants' requirement of allowing their members time to conduct a Special General Meeting to ensure participatory quorum was attained. That the delay is therefore inordinate nor in bad faith and urges the court to exercise its discretion in their favor.



3. He further deposed that one of the key objects of the Applicant is to ensure dwelling houses erected in its operational boundaries meet the set standards as a controlled development. That the Respondent is constructing a five-storey building in blatant breach of the Applicant's regulations and lacking pertinent approvals from National Environment Management Authority (NEMA) hence the prayers for injunction. That unless the court allows the instant Application, the Applicant and its members will suffer irreparable harm and injustice.
4. The application is not opposed despite service as shown in the Return of Service sworn on 9/11/2023 by Joseph Barasa Wanjala.
5. The Application was argued orally in court before me by Learned Counsel Ms. Mwaura on behalf of Thuku for the Applicants.
6. I have duly considered the pleadings and oral submissions made before court today. The main issue for determination is whether the Applicants have made a case for extension of time to file their appeal out of time.
7. The relevant law in an application seeking to appeal out of time is anchored in section 79G of the Civil Procedure Act. It provides;

“79G. Time for filing appeals from subordinate courts

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.”

8. The decision whether or not to grant leave to appeal out of time is an exercise of discretion. Such discretion can only be exercised upon giving of plausible explanations as envisaged in the proviso to section 79G above.
9. There are numerous pronouncements by the courts on factors a court ought to consider in such an application. Notably the SC in the case of Nicholas Kiptoo Arap Korir Salat Vs. Independent Electoral and Boundaries Commission & 7 others [2014]eKLR laid down the principles that govern the exercise of discretion in Applications for extension of time 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.”
10. The instant Application was filed on 12/9/2023 slightly over 45 days after delivery of the trial court Ruling. Is the Applicant deserving of the orders sought? I am afraid not. The explanation proffered that the delay was caused by allowing its members to attain quorum in a Special General Meeting is not proven. It is not stated when the said Special General Meeting was called, convened and the resolution made thereat, if at all. In fact, none of the annexures alluded to in the supporting affidavit including the impugned Ruling of the trial court was attached for this court to appraise itself at this stage.
11. The upshot of the foregoing is that the prayer for extension of time is unmerited, the rest of the prayers are now moot for consideration.
12. The Application is dismissed with no orders as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 9<sup>TH</sup> DAY OF NOVEMBER, 2023 VIA MICROSOFT TEAMS.**

**J G KEMEI**

**JUDGE**

Delivered online in the presence of;

Mwaura HB Thuku for 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Applicants

Respondent – Absent

