



One Step Family Group v Njenga & another (In their capacity as representatives of the Estate of Peter Njenga Ringiria) (Environment and Land Miscellaneous Application E183 of 2022) [2022] KEELC 13498 (KLR) (5 October 2022) (Judgment)

Neutral citation: [2022] KEELC 13498 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E183 OF 2022
LN MBUGUA, J
OCTOBER 5, 2022**

BETWEEN

ONE STEP FAMILY GROUP APPLICANT

AND

HANNAH WANJIKU NJENGA 1ST DEFENDANT

PAUL NJAU NJENGA 2ND DEFENDANT

**IN THEIR CAPACITY AS REPRESENTATIVES OF THE ESTATE OF PETER
NJENGA RINGIRIA**

(An application for extension of time to file a memorandum of appeal and service of the same out of time against the Decision and Ruling of Hon. B.M. Kimemia (ms) chief magistrate made on the 24th June 2022 in Nairobi Chief Magistrates Court Civil suit no. 5837 of 2018)

JUDGMENT

1. This miscellaneous suit was filed by a way of an application dated September 16, 2022 where the applicant is seeking leave to file a memorandum of appeal out of time against the ruling of the magistrate delivered on June 24, 2022 in CMCC 58 37 of 2018. The applicant avers that after the ruling was delivered, the counsel seized of the matter went on maternity leave and by the time she resumed her duties, the time to lodge an appeal had lapsed.
2. The applicant contends that they had sought to amend their pleadings before the trial court of which their prayer was declined in the aforementioned ruling. Further, the applicant contends that the respondent will not suffer any prejudice if the application is allowed.
3. The respondents have opposed the application *vide* the replying affidavit of Paul Njau Njenga dated September 30, 2022. They aver that there are many advocates in the firm of Kibatia & Co Advocates



- who could have handled the matter when the counsel proceeded on maternity leave. The respondents aver that the applicants have come to court in bad faith and that they have not filed the relevant documents including a certificate of delay.
4. I have duly considered the application, the response thereof as well as the oral submissions of the rival parties. The issue for determination is whether the applicant should be granted leave to file an appeal out of time.
 5. In *Joseph Kakomo Mbenga v Maingi Charles & another* [2018] eKLR, the court made reference to the case of *First American Bank of Kenya Ltd v Gulab P Shah & 2 others* Nairobi (Milimani) HCCC No 21255 of 2000 [2002] 1 EA 65 where the court set out the principles/factors to be considered in exercising its discretion when deciding whether or not to enlarge time as follows:-
 - (i) The explanation if any for the delay;
 - (ii) The merits of the contemplated action, whether the matter is arguable one deserving a day in court or whether it is a frivolous one which would only result in the delay of the course of justice;
 - (iii) Whether or not the respondent can adequately be compensated in costs for any prejudice that he may suffer as a result of a favourable exercise of discretion in favour of the applicant”.
 6. It has been held time and again that the right to appeal is a constitutional right, see *Edward Kamau & another v Hannah Mukui Gichuki & another* (2015) eKLR. The court however retains the unfettered discretion in granting leave to file an appeal out of time. Nevertheless, there must be some material before it to enable the court exercise such discretion. The applicant seeking enlargement of time to file an appeal must show good cause for doing so.
 7. In *LSG Luftbansa Service Europa/Afrika GMBH & another v Eliab Muturi Mwangi (Practicing in the name and style of Muturi Mwangi & Associates Advocates)* [2019] eKLR, the Court of Appeal allowed an application for extension of time on the basis that the delay was well explained and was not unreasonable or inordinate.
 8. On examination of the record, I find that the applicant has given a plausible explanation for the delay as the counsel seized of the matter had gone on maternity leave. I have also taken into consideration the averment made by the applicant that any prejudice that might be accessioned to the respondent can be cured by way of costs.
 9. In the circumstances, I find that the suit is merited and is allowed in the following terms
 1. I direct that the memorandum of appeal be filed and served within 14 days from the date of delivery of this ruling failure to which, the orders granted herein shall lapse the applicant is hereby condemned to pay costs of this suit.
 2. A copy of this judgment is to be placed in the substantive appeal file.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 5TH DAY OF OCTOBER, 2022
THROUGH MICROSOFT TEAMS.**

LUCY N. MBUGUA

JUDGE

In the presence of:-

M/s Njoroge for the Applicant



Paul Njau: The Respondent

Court assistant: Joan

