



REPUBLIC OF KENYA



**Kenya Women Finance Trust v Sangra & another (Civil Appeal
E011 of 2020) [2023] KEHC 937 (KLR) (14 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 937 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
CIVIL APPEAL E011 OF 2020
RPV WENDOH, J
FEBRUARY 14, 2023**

BETWEEN

KENYA WOMEN FINANCE TRUST APPLICANT

AND

RAPHAEL OKEYO SANGRA 1ST RESPONDENT

KEPHAS OCHIENG MWITA 2ND RESPONDENT

RULING

1. By a notice of motion dated 5/8/2022, Kenya Women Finance Trust, the applicant, seeks the following orders:-
 - a. Spent.
 - b. That this court be pleased to extend the time within which the applicant shall comply with the orders of the court issued on 8/7/2021 by a further 60 days.
 - c. Costs of the application be provided for.
2. The grounds upon which the application is premised are found in the body of application and the supporting affidavit sworn on behalf of the applicant by Evans Mutonde, the Regional Manager in the South Nyanza Region. It is the applicant's contention that this court issued a ruling date for 24/6/2021 on its application dated 4/12/2020; that the court was not sitting on 24/6/2021 and a follow up at the registry on 26/6/2021, it was advised that the ruling will be delivered on notice; that the ruling was delivered on 8/7/2021 but no notice had been issued; that the ruling of 8/7/2021 had strict timelines on compliance and failure to comply was brought by miscommunication of the ruling date. The applicant asked this court to exercise its discretion and grant the orders as prayed as it has an arguable appeal with a probability of success as was noted by this court on 8/7/2021.



3. The 1st and 2nd respondents did not file responses to the application. However, the 2nd respondent filed written submissions dated 13/10/2022 and filed in court on 18/10/2022. The applicant also filed its written submissions dated 11/10/2022 on 13/10/2022.
4. I have perused and considered the written submissions by both parties. The issue for determination is whether the applicant has demonstrated a proper basis for this court to extend time in which to comply with the orders of 8/7/2021.

The orders that the court issued are as follows:-

- (i) The applicant has failed to demonstrate that it is deserving of the stay order. The same is decline.
 - (ii) Leave is granted to the appellant to file and serve the appeal out of time.
 - (iii) The appeal be filed and served within sixty (60) days hereof.
 - (iv) The Records of Appeal be filed and served within sixty (60) days of serving the appeal.
 - (v) Costs of this application to abide the appeal.
5. The applicant contends that it failed to comply with the orders of the court issued on 8/7/2021 because it was not notified of the ruling date. There is evidence on the court record that all Counsel in this matter, were duly notified of the ruling scheduled for 8/7/2021 via email on 2/8/2021. The email from migorihighcourt@gmail.com was sent to roabisai@yahoo.com Counsel for the applicant, sonyango80@yahoo.com Counsel for the 1st respondent and cephasagure2015@gmail.com Counsel for the 2nd respondent. There is no indication that the email was not delivered to any of the Counsel.
 6. The Supreme Court of Kenya in *Nicholas Kiptoo Korir Arap Salat vs Independent Electoral & Boundaries Commission & 7 others* (2014) eKLR outlined the principles which a court should take into account when a party seeks extension of time. The Supreme Court stated among others, that a party seeking extension has the burden of laying a basis on why time should be extended, the delay should be explained to the satisfaction of the court and consideration should be made on a case to case basis. The Supreme Court also stated that the extension is not a matter of right and it is an equitable remedy available to a party deserving discretion of the court.
 7. Flowing from the above, this court has demonstrated that all the parties were informed when the ruling was to be delivered. If the scenario was that the notice of the ruling was not communicated to Counsel on record, the applicant has stated that it followed up with the registry on 26/6/2021 but they were told that it would be delivered on notice. The applicant being the party desirous to file the appeal, should have at least made another attempt even a month later to find out the status of the ruling. The applicant has brought this application over a year later.
 8. This court finds that the applicant is guilty of laches. Equity does not come to the aid of an indolent. The applicant has not given satisfactory reasons to warrant extension of the time within which to comply with the orders of 8/7/2021. The application dated 5/8/2022 is therefore without merit and is hereby dismissed with costs to the 2nd respondent since he is the only party who participated in these proceedings by way of written submissions.

DATED, DELIVERED AND SIGNED AT MIGORI THIS 14TH DAY OF FEBRUARY, 2023

R. WENDOH

JUDGE



Ruling delivered in the presence of:-

Mr. Singei for the Applicant.

No appearance for the 1st Respondent.

No appearance for the 2nd Respondent

Nyauke Court Assistant.

