

**IN THE COURT OF
APPEAL AT NAKURU
(CORAM: WARSAME, J.A. IN
CHAMBERS) CIVIL APPLICATION NO. E
034 OF 2024 BETWEEN**

**PHILEMON KIPKEMOI MIBEY.....APPLICANT
AND
RONALD KIPLANGAT MIBEI1ST
RESPONDENT LILGON KIPKEMOI MIBEI
.....2ND RESPONDENT NATHAN KIPKOECH
.....3RD RESPONDENT
SAIMON TERER.....4TH
RESPONDENT NICKSON CHERUIYOT.....5TH
RESPONDENT**

(An application for extension of time to serve a notice of appeal arising from the Ruling of the Environment and Land Court of Kenya in Kericho (Oundo J.) delivered on 14th February 2024

***in
Kericho ELC No. 92 of 2016)***

RULING

1. The applicant seeks extension of time to serve a notice of appeal under Rule 4 of the Court of Appeal Rules, 2022. The notice of appeal was filed on 27th February 2024 but the applicant's advocates inadvertently failed to effect service within seven days as required by Rule 79(1) of the Court of Appeal Rules and stay of further execution of committal orders issued on 14th February 2024 by Hon. Justice M.C. Oundo.
2. The applicant was found guilty of contempt of court and

committed to civil jail for six months. He has served one month.

The failure to serve was due to an inadvertent error by the advocates' clerk who had been instructed to serve but failed to do so.

3. The genesis of this application is that the applicant was a defendant in Kericho ELC No. 92 of 2016, a land dispute case. On 14th February 2024, Hon. M.C. Oundo found the applicant guilty of contempt of court and committed him to civil jail for a period of six months without an option of a fine. The applicant contends that he was not residing on the suit land and was arrested at his place of work in Nairobi. He maintains that he was never served with any notice requiring him to appear before court and that he was not in contempt of any court orders.
4. Aggrieved by the committal orders, the applicant filed a notice of appeal on 27th February 2024. However, his advocates inadvertently failed to effect service of the notice of appeal upon the respondents within seven days as required by Rule 79(1) of the Court of Appeal Rules, 2022. He avers failure to serve was due to an error by the advocates' clerk who had been instructed to serve but failed to do so

and that the advocates became aware of the non-service while preparing the application for stay.

5. The principles governing extension of time are established in **Abdul Aziz Ngoma vs Mungai Mathayo [1976] eKLR.**

This Court's discretion under Rule 4 comes into existence after 'sufficient reason' has been established.

6. Bearing this in mind, I am satisfied with the explanation given.

More importantly, the intended appeal raises arguable grounds including; whether the applicant was properly found to be in contempt of court orders which he had no knowledge of and whether the superior court erred by sentencing the applicant to imprisonment without providing an alternative of a fine. In my view, these grounds merit consideration by this court.

7. Consequently, the applicant is granted 7 days to effect service of the notice of appeal dated 27th February 2024 upon all respondents. I make no orders to cost.

Dated and delivered at Nakuru this 21st day of October, 2025.

M.WARSAME

.....
JUDGE OF APPEAL

I certify that this is a true

copy of the original
Signed
DEPUTY REGISTRAR