



**Dabaso v Ngalgalo (Environment and Land Miscellaneous Application
1 of 2023) [2024] KEELC 3508 (KLR) (29 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 3508 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 1 OF 2023**

AK BOR, J

JANUARY 29, 2024

BETWEEN

WAKO DABASO APPLICANT

AND

ABDUBA HAR NGALGALO RESPONDENT

RULING

1. Through the application dated 24/7/2023, the Applicant seeks leave to file his record of appeal out of time and to extend the time within which the appeal should have been filed. The Applicant swore the supporting affidavit in which he deposed that he instructed the firm of Kiget and Co. Advocates to represent him in the matter and seek stay and file an appeal. He deposed that the firm failed to file the appeal as instructed and he then instructed a new firm on 15/2/2023. He deposed that he was aggrieved by the judgment delivered by the Learned Magistrate and that the time for filing the appeal had lapsed. He added that the delay was not inordinate and blamed it on the mistake of his former advocate. He added that the Respondent would not suffer any prejudice and that he had an arguable appeal.
2. The Respondent swore the affidavit in opposition to the application. He pointed out that the Applicant did not seek leave before filing the appeal yet the time for lodging the appeal lapsed 30 days after the judgment in Nanyuki CMCC No. 86 of 2019 was delivered on 14/12/2022. The other ground taken up by the Respondent was that the Applicant had made many applications including the one dated 21/7/2023 which he filed in ELC Appeal No. 5 of 2023. The Respondent exhibited copies of the applications filed in Miscellaneous Application No. 11 of 2022 and in ELC Appeal No. 5 of 2023, which sought to strike out the appeal on the ground that it was filed three months after the delivery of the judgment.
3. The court directed parties to file written submissions, which they did. The Applicant submitted that in applications such as this, the court needs to consider whether the prayer for extension of time is merited



and whether the court could validate an appeal which was filed out of time. He relied on Section 79G of the *Civil Procedure Act* which gives the court the discretion to admit an appeal out of time if an applicant satisfies the court that he had a good and sufficient cause for not filing the appeal in time. The Applicant submitted that the dispute revolved around the land that his father bought and owned and on which his family had been residing. He added that the judgment of the Learned Magistrate court may see them get evicted from the land which they have occupied since they were born. He reiterated that it was his advocate to blame for not getting the appeal filed on time.

4. The Respondent filed submissions in which he pointed out that the Applicant had filed an appeal out of time, which prompted the Respondent to file the application dated 21/7/2023 seeking to strike out the appeal for being filed irregularly. The Respondent went further to submit that the Applicant instructed his current advocate to file the appeal yet he should first have sought leave to lodge the appeal out of time. He submitted that there was inordinate delay of almost 10 months and added that the Applicant had gained notoriety in this court for filing numerous applications in an attempt to delay the Respondent's access to justice which in his view amounted to abuse of the court process which should not be entertained by the court.
5. The issue for determination is whether the court should extend time for the Applicant to file his appeal out of time. The impugned judgment was delivered by the Learned Magistrate on 14/12/2022. The Applicant blames his advocate for not filing the appeal on time. There is no evidence of this attached to the affidavit. Even after the Applicant learned that his former advocates failed to lodge the appeal, he did not seek leave to have the time for filing the appeal extended. Instead, he brought many other applications. The Applicant deponed in his affidavit that on 15/2/2023 he instructed his current advocates to come on record. The application for leave to extend the time for lodging the appeal was filed on 24/7/2023, which is five months after learning that his former advocates had failed to lodge the appeal on time. No explanation has been given for the long delay in seeking to extend time to file the appeal.
6. The court is not satisfied that the orders sought in the application dated 24/7/2023 are merited. The application is dismissed with costs to the Respondent.

DELIVERED VIRTUALLY AT NANYUKI THIS 29TH DAY OF JANUARY 2024.

K. BOR

JUDGE

In the presence of: -

Mr. Robin Bundi for the Applicant

Ms. Stella Gakii- Court Assistant

No appearance for the Respondent

