



**Kasoha v Muhavi (Environment and Land Miscellaneous Application
E001 of 2023) [2024] KEELC 13 (KLR) (18 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 13 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E001 OF 2023**

E ASATI, J

JANUARY 18, 2024

BETWEEN

SAMUEL KIHUYA KASOHA APPLICANT

AND

GLADYS MUHAVI RESPONDENT

RULING

1. Vide the Chamber Summons dated 18/10/2023, Samuel Kihuya Kasoha, the Applicant, sought for leave to file appeal out of time. The grounds upon which the application was brought are that judgement in Vihiga SPMC ELC no. 46 of 2021 was delivered on 18th April, 2023 against him. That he did not appeal within the time provided by law because he believed that he had to wait for a copy of the judgement before appealing, which copy took some time. That he desires to appeal against the judgement and that no prejudice will be occasioned to the Respondent.
2. The application was supported by the averments in the Supporting Affidavit sworn by the applicant on 18th October, 2023 and the annexures thereto.
3. The application was opposed vide the contents of the Replying Affidavit sworn by the Respondent on the 5th December, 2023. The Respondent contended that the application was an afterthought only filed by the applicant after he was served with the decree. That the Applicant was present in court when the judgement was read.
4. The application was argued orally on 11th December, 2023.
5. Under Section 79 G of the *Civil Procedure Act*;

“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.”

The considerations to be made in an application for leave to file appeal out of time under the proviso to Section 79G *Civil Procedure Act*, as held in the case of *Mwangi v Kenya Airways Ltd* [2003] KLR, include the period of delay, the reason for the delay, the arguability of the appeal, the degree of prejudice which could be suffered by the Respondent if the extension is granted, the importance of compliance with time limits to the particular litigant or issue; and the effect if any on the administration of justice or public interest if any is involved.

6. Also in *Leo Sila Mutiso v Rose Hellen Wangeri Mwangi* Civil Appeal 255/1997, the court, in considering the exercise of discretion to extend time for filing of appeal, held that: -

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general, the matters which this court takes into account in deciding whether to grant an extension of time are first, the length of the delay, secondly, the reason for the delay; thirdly (possibly) the chances of the appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the Respondent if the application is granted.”

7. I have considered the application, the grounds in support thereof and the grounds in opposition thereof as contained in the Replying Affidavit. The only ground advanced to explain why appeal was not filed within time is that the Applicant believed that he had to get a copy of the judgement before filing the appeal and was therefore waiting for it hence the delay. It is not indicated how long the wait was and on which date the Applicant finally received the copy of the judgement. There is no evidence that the applicant requested the court for the copy of the judgement. The copy of the judgement annexed to the application is signed and certified on 18th April, 2023 in the presence of the applicant among others.
8. There has been a delay of about six months. The Respondent has commenced the process of execution of the judgement as annexure SKK2 to the supporting Affidavit shows.
9. I find that the delay in filing the appeal has not been explained and that the Respondent will suffer prejudice if the matter is delayed further. I find that the application lacks merit and hereby dismiss it. As the parties are close family members, it is just that each party bear own costs.

Orders accordingly.

RULING, DATED AND SIGNED AT VIHIGA, READ VIRTUALLY THIS 18TH JANUARY, 2024 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

**E. ASATI,
JUDGE.**

