



Maina & 3 others (All Suing as Officials of Kondoo Training Centre Self Help Group) v Attorney General & 4 others (Environment & Land Case 452 of 2013) [2024] KEELC 37 (KLR) (18 January 2024) (Ruling)

Neutral citation: [2024] KEELC 37 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 452 OF 2013
EO OBAGA, J
JANUARY 18, 2024**

BETWEEN

**JAMES MAINA 1ST PLAINTIFF
DANIEL MWANGI GIKONYO 2ND PLAINTIFF
BEN KIPLAGAT KANGONGO 3RD PLAINTIFF
DANIEL CHEGE 4TH PLAINTIFF
ALL SUING AS OFFICIALS OF KONDOO TRAINING CENTRE SELF HELP
GROUP**

AND

**ATTORNEY GENERAL 1ST DEFENDANT
NATIONAL LAND COMMISSION 2ND DEFENDANT
JOSEPH NG'ETICH 3RD DEFENDANT
JOHN SINGOE'I 4TH DEFENDANT
PAUL GATHUO 5TH DEFENDANT**

RULING

1. This is a ruling in respect of a notice of motion dated 19.9.2023 in which the Applicants are seeking extension of time to file an appeal to the Court of Appeal. The Applicants are seeking stay of execution pending the hearing and determination of the appeal. The Advocate for the Applicant was not the one on record during the hearing and delivery of judgement. The Advocate is therefore seeking leave of the court to come on record for the Applicants post judgement.



2. The judgement in this case was delivered on 20.4.2022. Both the Applicants and Respondents participated fully in the hearing and were represented by counsel. The judgement was transmitted to the Advocates via their last known e-mail addresses due to the covid 19 pandemic.
3. The Applicants contend that their Advocates did not inform them of the judgement and that they only came to know about the same on 28.8.2023 when the Applicants attempted to evict them pursuant to the notice dated 28.8.2023. They contend that their former advocate re-located from Eldoret and that they do not know his whereabouts.
4. The Applicants further contend that they have put up their businesses on the suit property and that if they were to be evicted without first exhausting their right of appeal, they will suffer irreparable loss and that will render their intended appeal nugatory. They further argue that they have an arguable appeal with high chances of success.
5. The Applicants' application was opposed by a replying affidavit sworn on 13.10.2023. The Respondents contend that the reason given by the Applicant for not filing an appeal in time is not excusable. The Respondent state that the Applicants should have followed their case by even visiting the Registry to ascertain its status. They further state that the Applicants' claim that their Advocate re-located is not true as their former Advocates still maintains an office at Eldoret.
6. The Respondents further state that the Applicants' former lawyer still maintains his phone number and that if the Applicants were serious with their case, they would have been informed of the outcome. The Respondents contend that the delay to file an appeal is inexcusable and the application ought to be dismissed.
7. I have carefully considered the Applicants' application as well as the opposition to the same by the Respondents. I have also considered the submissions by the parties herein. The issue which emerge for determination are firstly whether the Applicants' present lawyers should be allowed to come on record for the Applicants in place of the firm of Magut & Sang Associates. Secondly, whether the Applicants should be granted extension of time to file an appeal out of time. Thirdly, which order should be made on costs.
8. On the first issue, the law is clear that once judgment has been entered and one of the parties wishes to change Advocates, such change can only be sanctioned by eave of curt. The Advocate sought to be replaced has either to consent to be replaced or he be served so that he can be heard. In the instant case, there is no evidence that the firm of Magut & Sang Associates who were on record for the Applicants were served.
9. The firm of Koech –Lelei & Co. Advocates who are seeking to replace the firm of Magut & Sang Associates have not indicated whether they had difficult in tracing the said firm for service. The need for court's sanction where change is sought after judgment was intended to cure the mischief where litigants are assisted in their cases upto judgment only for them to switch lawyers with a view to shortchanging their previous lawyer to avoid payment of legal fees.
10. As there was no evidence that the firm of Magut & Sang Associates were served, I will not allow the firm of Koech – Lelei to come on record in place of Magut & Sang Associates even if the Respondents' lawyers are not opposed to the firm of Koech –Lelei & Co. Advocates coming on record.
11. On the second issue, the judgement herein was delivered on 20.4.2022. The same was transmitted to the last known e-mail address of the Advocates for the parties. The file was then released to the registry. The reason for not filing an appeal in time is that the Applicants' lawyers did not inform them of the



judgement. The reason for this is that their Advocate's whereabouts is not known as he re-located from Eldoret.

12. The Applicants are not being candid. In the notice of judgement which was sent to the parties herein, by counsel for the Respondent, it is clear that one of the recipients of the notice dated 25.8.2023 was Magut & Sang Associates. The Applicants cannot therefore be heard to claim that their Advocates re-located from Eldoret and they do not know his whereabouts.
13. The Applicants' advocate maintains a phone and if the Applicants were keen, they would have traced him. The Respondents have demonstrated that the Applicants' former Advocate's line is active. The law is clear that where there is delay, the delay must be explained to the satisfaction of the court. In the instant case, there is delay of almost one and half years. The Applicants instead of explaining why they could not file an appeal in time, they have instead chosen to pretend that their Advocate re-located and they did not know his whereabouts.
14. A case belongs to a litigant not his Advocate. It is the duty of a litigant to keep checking on the progress of his case. The Applicants should have gone to the registry to check on the progress of their case if it is indeed true that they were unable to trace their Advocates.
15. As was said in the case of *Nicholas Kiptoo Arap Korir Salat – Vs- Independent Electoral and Boundaries Commission & 7 others*, extension of time is not a right of a party. The reason for the delay must be explained to the satisfaction of the court. The Applicants in the instant case have not given a sufficient reason why they could not file an appeal in time. I therefore find no merit in the Applicants' application which is dismissed with costs to the Respondents.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 18TH DAY OF JANUARY, 2024.

E. OBAGA

JUDGE

In the virtual presence of;

Mr. Tirop for M/s Lelei for 3rd, 4th and 5th Defendant.

Mr. Njue for Respondents.

Court Assistant –Laban

E. OBAGA

JUDGE

18TH JANUARY, 2024

