



**Dahir v Board of Management Bulla College Primary School & another (Civil Application E298 of 2024) [2025] KECA 308 (KLR) (21 February 2025) (Ruling)**

Neutral citation: [2025] KECA 308 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E298 OF 2024  
AO MUCHELULE, JA  
FEBRUARY 21, 2025**

**BETWEEN**

**ABASS MOHAED DAHIR ..... APPLICANT**

**AND**

**THE BOARD OF MANAGEMENT BULLA COLLEGE PRIMARY  
SCHOOL ..... 1<sup>ST</sup> RESPONDENT**

**MOHAMED ADAN ODWA ..... 2<sup>ND</sup> RESPONDENT**

*(An application to file an appeal out of time against the judgment and decree of the Environment and Land Court of Kenya at Garissa (J. M. Mutungi, J.) dated 28th September 2023 in ELCA Cause No. 7 of 2022)*

**RULING**

1. The dispute between the applicant, Abass Mohamed Dahir, and the respondents, The Board of Management Bulla College Primary School and Mohamed Adan Odwa, is over a plot measuring 200ft by 200ft known as plot No. 1 in Garissa Municipality. On appeal filed by the respondents following a decision against them by the subordinate court at Garissa, the Environment and Land Court (ELC) at Garissa (J. M. Mutungi, J.) found that, although the applicant had been allocated the plot by the Commissioner of Lands on 7<sup>th</sup> January 1997, he had not formally accepted the offer within 30 days or made the requisite payments in the letter of allotment. Consequently, the offer had lapsed and the applicant had not acquired any proprietary interest on the plot, despite having made payments subsequently. The appeal was allowed and the trial court's decision granting the plot to the applicant was set aside.
2. The decision by the ELC was delivered on 28<sup>th</sup> September 2023.



Aggrieved, the applicant filed a valid notice of appeal dated 6<sup>th</sup> October 2023. He was required to file the memorandum and record of appeal within 60 days from the date of notice of appeal, but did not. He filed them on 3<sup>rd</sup> May 2024, about seven (7) months later.

3. This is a notice of motion dated 17<sup>th</sup> May 2024 by which the applicant seeks the extension of time so that he can file a memorandum and record of appeal, and that the filed memorandum and record of appeal be deemed to be properly filed so that he can serve it. He states that he is an elderly man, aged 78, who is sickly and illiterate and that he was not able to instruct a lawyer to file the appeal. He added that the intended appeal has arguable grounds and that the orders sought would, if granted, not prejudice the respondents
4. The respondents were served but did not file any response to the application.
5. Under Rule 4 of the Court of Appeal Rules, 2022, this Court has the discretion to extend power to appeal. The discretion is exercised with the primary purpose of doing justice to the parties. In dealing with the application, the Court will want the applicant to show that there was no inordinate delay in bringing the application, and provide plausible reasons why he could not, in the first place, bring himself within the statutory timelines. He has to show that the respondent will not be unduly prejudiced, if the time is extended, and, then that the intended appeal has possible chances of success (See Andrew Kiplagat Chemaringo vs Paul Kipkorir Kibet [2018] eKLR.
6. The applicant is not saying that he became old, sickly and illiterate at the time of seeking to appeal. He is the one who in 2019, filed the suit against the respondents in Garissa Court to claim the property. He was represented and he filed the notice of appeal through which his advocates were demonstrating his intention to challenge the decision of the superior court.
7. Given these facts, the applicant's reasons for not filing the memorandum and record of appeal in time are not satisfactory, and the delay of seven (7) months was inordinate.
8. I have perused the memorandum of appeal against the judgment by the learned judge. Although it is not for a single judge to pass judgment on the grounds of appeal, my view is that the possible chances of success of the intended appeal have not been demonstrated.
9. In conclusion, I find no merit in the application which I dismiss.

**DATED AND DELIVERED AT NAIROBI THIS 21<sup>ST</sup> DAY OF FEBRUARY 2025.**

**A. O. MUCHELULE**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

Signed

**DEPUTY REGISTRAR.**

