



Karanja & another v Mukiri (The personal representative of the Estate of Regina Mweru Njuku - Deceased) & another (Civil Application E270 of 2024) [2025] KECA 234 (KLR) (7 February 2025) (Ruling)

Neutral citation: [2025] KECA 234 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E270 OF 2024
AO MUCHELULE, JA
FEBRUARY 7, 2025**

BETWEEN

MICHAEL MWANGI KARANJA 1ST APPLICANT

ALEX NGOTHO 2ND APPLICANT

AND

MARK ANTHONY MUKIRI (THE PERSONAL REPRESENTATIVE OF THE ESTATE OF REGINAMWERU NJUKU - DECEASED) 1ST RESPONDENT

JANE WANDIA 2ND RESPONDENT

(An application to file an appeal out of time against the Judgment and Decree of the Environment and Land Court of Kenya Nairobi (Mogeni, J.) dated 14th February 2023 in ELC No. 1049 of 2014)

RULING

1. Under Rule 4 of the Court of Appeal Rules, 2022 this Court has discretionary and unfettered power to extend time to appeal. The Court will balance the applicant's constitutional right to appeal against the need to ensure the timely resolution of disputes. In dealing with the application, the Court will expect the applicant to give the reasons why he did not file the appeal within time; show that the delay in question was not inordinate; that, in extending time, the respondent will not be unduly prejudiced; and that the intended appeal has possible chances of success. (See Nicholas Kiptoo Arap Salat vs IEBC & 47 Others [2014] eKLR).
2. The background of this application is that the 1st respondent Mark Antony Mukiri, vide a plaint amended on 4th April 2022 sued the 2nd respondent, Jane Wandia, the 1st applicant, Michael Mwangi Karanja, and the 2nd applicant, Alex Ngoto, seeking a permanent injunction to restrain them from



interfering with the development on plot No. C41 situated in Komarock Estate in Nairobi (also known as Nairobi/Block 133/260); a declaration that the deceased (Regina Mweru Njuku) was the rightful owner of the plot; a declaration that the issuance of a lease to the 2nd respondent in respect of the plot was unprocedural, illegal, null and void; an order cancelling the lease; and general damages. It was his case that the deceased had been allocated the plot by the City Council of Nairobi in 1995; had been paying rent and had approved development plans on basis of which she was undertaking development.

3. The applicants and the 2nd respondent opposed the claim. Their case was that the plot was never owned by the deceased, and that at all times the 1st applicant was the registered proprietor of the plot. A third party motion seeking indemnity and full compensation at the present market value was filed by the County Council of Nairobi.
4. The dispute was heard, and in a judgment delivered on 14th February 2023 the Environment and Land Court at Nairobi (Mogeni, J), it was held that the 1st respondent was the lawful registered owner of the plot and that the certificate of lease held by the 1st applicant over the plot had been issued unprocedurally and illegally, and should be cancelled. An order of permanent injunction was issued and general damages amounting to Kshs.10,000,000 were awarded.
5. The applicants and the 2nd respondent were aggrieved by the decision. The 2nd respondent filed an appeal. The appeal is Civil Appeal No. E191 of 2024 and is yet to be heard and determined.

The applicants timeously lodged a notice of appeal on 22nd February 2023.

6. It does not appear to be in dispute that, following the impugned judgment the applicants filed an application before the superior court dated 15th November 2023 seeking the review of the judgment. The application was heard and dismissed on 9th May 2024. It is also not disputed that after the notice of appeal, the applicants and the 2nd respondent filed before this Court an application seeking injunctive orders. This Court dismissed the application on 26th May 2023.
7. The present application dated 30th May 2024 seeks to file and serve a memorandum and record of appeal out of time. The reasons for the delay were that the applicants on 22nd February 2023 applied for certified copies of proceedings and judgment and it took long for them to be availed. Secondly, that time was taken while filing the application in this Court and application for review in the superior court, and the result of the two applications necessitated them to change advocates who advised them to file the present application. They annexed a draft memorandum of appeal which they say discloses that the intended appeal has reasonable chances of success.
8. The 1st respondent opposed the application indicating that the applicants had wasted precious time by applying for injunction and applying for review instead of filing the memorandum and record of appeal on time; that it was ill-advised and wrong for the applicants, who had filed a notice of appeal, to go to the superior court for review. The 1st respondent stated that the certificate of delay (“MMI”) indicate that the certified proceedings and judgment were ready on 10th January 2024 and, therefore, there was no explanation why the appeal was not filed then, or why the application could not be brought soon thereafter. It was denied that the intended appeal had any chances of success.
9. The applicants and the 2nd respondent did not file any submissions but the 1st respondent did, through his counsel. According to him, the applicants’ application was an afterthought because it was filed after they failed to obtain their orders on review; a review that was sought to challenge the decision of the superior court. When they lost on review, they now want to chance on appeal, it was submitted. Reference was made to the decision of Daniel Gicheru Kingori & 2 Others vs Wambugu Civil



Application No. E167 of 2022 to be able to argue that the application was an abuse of the process of the Court.

10. It was further argued that the applicants are merely engaged in tactics that will not only delay the course of justice but also prejudice the 1st respondent. The tactics involved filing a notice of appeal to challenge the impugned judgment, abandoning the notice of appeal, seeking review before the superior court, and, after being unsuccessful, seeking to revive the appeal by applying for enlargement of time to file the memorandum and record of appeal. Such conduct, it was submitted, was not only prejudicial but underserving of the discretion of this court (See *George Hecto Odero Rading' v Kenya Power & Lightning Company Limited* [1986] eKLR).
11. Lastly, it was submitted that there was already an Appeal No. E191 of 2024 filed by the 2nd respondent to challenge the impugned judgment and in which the applicants can urge their case. Therefore, the dismissal of this application will not prejudice them.
12. I have considered the application, the response by the 1st respondent and the submissions. Counting from the date when the notice of appeal was filed, the delay in question is about one
 1. year and three (3) months. That is long delay. The applicants' explanation is neither reasonable nor plausible. They filed the notice of appeal and unsuccessfully sought an injunction. When they failed to convince this Court to grant an injunction, they went before the trial court to challenge the impugned judgment by way of review. It is only when they were not successful that they now seek to revive the appeal, as it were, by seeking the extension of time to file and serve the memorandum and record of appeal. The applicants are, in my considered view, playing the Russian roulette with the administration of justice. They are engaged in a mischievous conduct that amounts to an abuse of the process of the court; conduct that is prejudicial to the 1st respondent. One cannot seek review and prefer an appeal on the same grounds (See *Gerald Kithu Muchanje vs Catherine Muthoni Ngare & Another* [2015] eKLR).
13. The applicants averred that they were vigilant litigants whose delay and conduct were excusable. However, for instance, the requested certified copies of proceedings and judgment were ready for collection on 10th January 2024. Why did it take them until 30th May 2024 to come before this Court to seek the extension of time to file the appeal?
14. It must be remembered that the timely resolution of disputes has a statutory and constitutional underpinning. On this occasion, I find that the applicants' delay was inordinate and the reasons for the delay are not satisfactory at all. The application is not merited and is hereby dismissed with costs to the 1st respondent.

DATED AND DELIVERED AT NAIROBI THIS 7TH 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.

