



Mbugua (Suing on his behalf and on behalf members of Bedsango River Farmers Group) v Archdiocese of Nairobi Registered Trustees & 2 others (Civil Application E355 of 2024) [2025] KECA 588 (KLR) (28 March 2025) (Ruling)

Neutral citation: [2025] KECA 588 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E355 OF 2024
PO KIAGE, JA
MARCH 28, 2025**

BETWEEN

BONIFACE MBUGUA (SUING ON HIS BEHALF AND ON BEHALF MEMBERS OF BEDSANGO RIVER FARMERS GROUP) APPLICANT

AND

ARCHDIOCESE OF NAIROBI REGISTERED TRUSTEES 1ST RESPONDENT

PATRICK KANJA WACHIRA 2ND RESPONDENT

EDELVALE TRUST 3RD RESPONDENT

(An Application brought under Rule 4 of the Court of Appeal Rules, 2022 seeking extension of time required to file and serve a memorandum and record of appeal against the judgment of Environment and Land Court at Nairobi (Komingoi, J.) dated 12th October 2024 in ELC Cause No. 1177 of 2014)

RULING

1. By his motion on notice dated 9th July 2024, the applicant Boniface Mbugua who sues on his behalf and on behalf of members of Bedsango River Farmers Group, beseks this Court’s favourable discretion under Rule 4 of the Court of Appeal Rules to the end that the time required to file and serve a record and memorandum of appeal against the judgement of ELC delivered on 12th October 2022, be extended.
2. In his supporting affidavit of even date, the applicant swears that even if a notice of appeal was filed on his behalf on 26th October 2023, his former advocates did not file the record of appeal due to non-payment of fees. He was unable to pay fees because he was “in a state of severe illness confined in and out of hospital rendering [him] unable to attend to this matter adequately.” He has annexed various



medical documents including reports on CT scans to the head and police surgeon reports indicative of his having been assaulted leading to Brain MRIs after chronic persisted headaches.

4. The 3rd respondent opposes the application terming it, in his replying affidavit sworn on 19th September 2024, “an abuse of court process.” He also says that “the applicant choose (sic) to sleep on his right (sic).” He also terms the 7-month delay ‘inordinate’ and prays that the application be dismissed. He also filed written submissions in which he repeated that the delay of approximately 7 months is ‘inexcusable’ and pours cold water on the attached medical reports as they “do not point at incapability issuing directions to his counsel to file the appeal” (sic). He cites this Court’s old decision of Abdul Azizi Ngoma vs Mathayo [1976] KLR 61 to the effect that “the discretion to extend time under rule 4 only comes into existence after ‘sufficient reason’ for extending time has been established.”
5. I need to mention at the onset that the requirement for proof of sufficient cause, which was a requirement 50 years ago, is no longer applicable. Today, and it has been so for a while now, the discretion of a single judge is wide and unfettered. It is to be exercised judicially and judiciously on the basis of said principle, however, and not whimsically or arbitrarily in accordance with personal inclination. Some of the indicative matters a judge may consider include the length of delay; the reasons for delay; (possibly) the chances of the appeal succeeding; and, the degree of prejudice that the respondent may suffer if extension is granted. This Court has so held in many cases. See, for instance Leo Sila Mutiso vs. Hellen Wangari Mwangi [1999] 2 EA 231.
6. I have borne all of these considerations in mind and am of the opinion that in the circumstances of the applicant’s stated and demonstrated medical infirmity, which I need not examine with a fine tooth comb as all I need is a plausible explanation, the delay herein is not inordinate. I am inclined to grant the prayer for extension of time, bearing in mind that what is at stake is land over and about which the appellant, on behalf of himself and others, seeks to exercise his undoubted right to appeal. I see no real prejudice being visited upon the respondents by such extension.
7. In the result, I extend time for filing the record and memorandum of appeal, which shall be filed and served within fourteen (14) days hereof.
8. I note that the motion has a prayer for “status quo to be maintained” whatever that means. It is not for me as a single judge to grant such prayer, and I ignore it.
9. The costs of the motion shall be in the appeal. Order accordingly.

DATED AND DELIVERED AT NAIROBI THIS 28TH DAY OF MARCH, 2025.

P. O. KIAGE

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

