



Adol v Yuala (Civil Application E142 of 2024) [2025] KECA 481 (KLR) (7 March 2025) (Ruling)

Neutral citation: [2025] KECA 481 (KLR)

REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION E142 OF 2024
WK KORIR, JA
MARCH 7, 2025

BETWEEN

ALFRED OGOLLA ADOL APPLICANT

AND

JOSEPH ONYANGO YUALA RESPONDENT

(Being an application for leave to file an appeal out of time against the Judgment of the Environment and Land Court at Siaya (A.Y. Koros, J.) dated 19th September 2024 in ELC Case No. 51 of 2021)

RULING

1. In the notice of motion dated 3rd October 2024, the applicant seeks an order of enlargement of time to file an appeal against the judgment delivered on 19th September 2024 by Koros, J. of the Environment and Land Court (“ELC”) in Siaya ELC No. 51 of 2021. The application is premised on the grounds and averments as contained on the face of the application as well as in the supporting affidavit sworn by the applicant on the date of the application.
2. The applicant avers that the delay in filing the appeal resulted from miscommunication between himself and his former advocates on record. He states that upon delivery of judgment, he was under the impression that the former advocates would still act for him in the appeal and that they had filed a notice of appeal in the matter. However, it was not until 27th September 2024, that the former advocates informed him that they would not represent him in the appeal. On 2nd October 2024, he lodged a notice of appeal dated 30th September 2024 together with a letter requesting for a copy of the proceedings. He also avers that the respondent will not suffer any prejudice were time to be enlarged to allow him to pursue the appeal. He, therefore, prays that the application be allowed on the further grounds that the intended appeal is arguable and has high chances of success.
3. Despite being served with the application and the hearing notice, the respondent did not file any response or submissions. On the other hand, the applicant filed submissions dated 28th January 2025.



In the submissions, the applicant rehashed the contents of the application and urged that the motion has met the threshold for grant of leave to appeal out of time.

4. This Court and the Supreme Court have established certain principles that guide the exercise of discretion in an application for extension of time. For instance, in *Paul Wanjohi Mathenge vs Duncan Gichane Mathenge* [2013] eKLR, the Court stated as follows:

“The discretion under Rule 4 is unfettered, but it has to be exercised judicially, not on whim, sympathy or caprice. I take note that in exercising my discretion I ought to be guided by consideration of the factors stated in previous decisions of this Court including, but not limited to, the period of delay, the reasons for the delay, the degree of prejudice to the respondent and interested parties if the application is granted, and whether the matter raises issues of public importance...”

Also, see the decision of the Supreme Court in *Nicholas Kiptoo Arap Korir Salat vs. Independent Electoral and Boundaries Commission & 7 Others* [2014] eKLR.

5. The above principles will guide me in determining this application. In this application, the main issue for determination is whether the applicant has satisfactorily explained the delay in filing his appeal.
6. The judgment in this case, having been delivered on 19th September 2024, the applicant should have filed the notice of appeal by 1st October 2024. However, the notice of appeal was lodged in the registry on 2nd October 2024, while the present application is dated 3rd October 2024. The delay herein is of one day. The explanation tendered by the applicant is that he was under the mistaken impression that the former advocates would continue to act for him on appeal, only to be informed of the termination of the advocate-client relationship on 27th September 2024. In as much as 27th September 2024 was still within the prescribed 14 days, the applicant lodged the notice of appeal on 2nd October 2024. The delay is negligible, and the applicant’s action of lodging a notice of appeal one day late and simultaneously requesting a copy of the typed proceedings is evidence of a party keen on pursuing his appeal. The one-day delay is therefore excusable in the circumstances.
7. Consequently, I find merit in the motion and, accordingly, allow it on the following terms:
 - i. That the applicant’s Notice of Appeal dated 1st October 2024 and lodged in the registry on 2nd October 2023 is deemed as properly filed. The same to be served upon the respondents in accordance with the Rules of this Court.
 - ii. The time for all the other activities consequent to the service of a notice of appeal shall be as per the Rules of the Court, and time will run from the date of this ruling.

8. The respondent having not participated in this application, I make no order as to costs.

DATED AND DELIVERED AT KISUMU THIS 7TH DAY OF MARCH 2025.

W. KORIR

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JUDGE OF APPEAL

I certify that this is a True copy of the original

Signed

DEPUTY REGISTRAR

