



**Kimani v Wanjohi & another (Civil Application E209 of 2024)
[2025] KECA 443 (KLR) (7 March 2025) (Ruling)**

Neutral citation: [2025] KECA 443 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E209 OF 2024
M NGUGI, JA
MARCH 7, 2025
[IN CHAMBERS]**

BETWEEN

PAUL JOHN KIMANI APPLICANT

AND

JOSEPH MWANGI WANJOHI 1ST RESPONDENT

NANCY NYAMBURA MWANGI 2ND RESPONDENT

(Being an application for extension of time to file and serve a memorandum of appeal out of time in an intended appeal from the judgment and decree of the Environment and Land Court at Nairobi (Omange J.) dated 7th March, 2024 in Consolidated ELCA/3/2022 & ELCA/089/2021)

RULING

1. In the application dated 6th May, 2024, the applicant, ^{Paul John Kimani, seeks} extension of time to file and serve his memorandum of appeal from the judgment of the Environment and Land Court, dated 7th March 2024, in the consolidated appeals, ELCA/3/2022 and ELCA/089/2021, out of time.
2. The application has been brought under section 3A and 3B of the Appellate Jurisdiction Act and rule 4 of this Court's Rules. The applicant also cites provisions of the Civil Procedure Act which are not applicable to matters before this Court. The grounds forming the basis of the application are set out on its face and in the affidavit in support sworn by the applicant on 6th May 2024.
3. The applicant avers that judgment was entered in his favour as against the respondents on 7th March 2024. He was aggrieved by part of the said judgment with respect to the counterclaim and he filed a notice of appeal on 15th March 2024. Through a letter to the Deputy Registrar dated 12th March 2024, he requested for typed proceedings and followed up the request with another letter dated 18th April 2024. On 29th April 2024, he went to the ELC Registry at Milimani to make a further follow up on



- the progress of the typing of proceedings and decree and was informed that he would be issued with a certificate of delay.
4. He avers further that on 2nd and 3rd May 2024, he tried to file the memorandum of appeal online but was not able to as the system was not allowing him to file a 'New Case'. On 4th May 2024, he sought assistance in filing the memorandum of appeal, but was informed that he could not file it as the 30 days' statutory period for filing had passed. It is the applicant's averment that he had at all times followed up on his matter, erroneously believing that the memorandum and record of appeal were supposed to be filed within 60 days of delivery of the judgment, being on or before 7th May 2024, not knowing that the memorandum of appeal was required to be filed within 30 days of judgment.
 5. The applicant avers that he intends to raise fundamental points of law and of fact, and believes that his appeal has reasonable chances of success if leave is granted; that his application has been made without unreasonable delay, which is 29 days late; and that the respondents will not be prejudiced as they are illegally on his land, having disobeyed a court order to vacate.
 6. The applicant filed submissions dated 2nd June 2024 in which he reiterates the averments set out in his affidavit.
 7. There is no response from the respondents.
 8. I have considered the application and the affidavit in support, as well as the applicant's submissions. The judgment that the applicant seeks to appeal against was delivered on 7th March, 2024. The applicant filed his notice of appeal on 15th March 2024, within the time prescribed under rule 77(2) of this *Court's Rules*. Under rule 84(1), the applicant was required to file his memorandum and record of appeal within 60 days of filing the notice of appeal, that is to say on or before 14th May 2024.
 9. This application was filed on 6th May 2024, well before the expiry of the 60-day period permitted under rule 84(1), which provides, with respect to institution of appeals, that the memorandum and record of appeal shall be lodged, 'in the appropriate registry, within sixty days after the date when the notice of appeal was lodged..'.²
 10. The applicant filed his notice of appeal within the time prescribed under the rules. He took every step preparatory to filing his appeal, including bespeaking the proceedings from the first appellate court by a letter dated 12th March 2024. Instead of filing the present application, he could have filed his memorandum and record of appeal.
 11. It appears to me that it is a misunderstanding on the part of the applicant with respect to the time requirement for filing an appeal, which he seems to believe was thirty (30) days from the date of the judgment, that led to his filing of the present application. The 60-day period from the date of filing of the notice of appeal provided under the Rules has since expired, and in the absence of orders of this Court extending the time, the applicant will be barred from instituting his appeal.
 12. Accordingly, it is my finding that the application dated May 6, 2024 is merited, and it is hereby allowed. The applicant shall file and serve his memorandum and record of appeal within thirty (30) days hereof. There shall be no order as to costs.

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

MUMBI NGUGI

JUDGE OF APPEAL

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



signed

DEPUTY REGISTRAR

