



**Tenna & another v Joslyn & 5 others (Civil Appeal (Application) 148 of 2023) [2025] KECA 657 (KLR) (9 April 2025) (Ruling)**

Neutral citation: [2025] KECA 657 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CIVIL APPEAL (APPLICATION) 148 OF 2023  
PM GACHOKA, JA  
APRIL 9, 2025  
[IN CHAMBERS]**

**BETWEEN**

**PETER H TENNA ..... 1<sup>ST</sup> APPLICANT**

**WYCLIFFE WINSTON WAITA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**SARA JOSLYN ..... 1<sup>ST</sup> RESPONDENT**

**NAKURU COUNTY LAND REGISTRAR ..... 2<sup>ND</sup> RESPONDENT**

**NAKURU COUNTY SURVEYOR ..... 3<sup>RD</sup> RESPONDENT**

**NAKURU COUNTY LAND CONTROL BOARD ..... 4<sup>TH</sup> RESPONDENT**

**COMMISSIONER OF LANDS ..... 5<sup>TH</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 6<sup>TH</sup> RESPONDENT**

*(An application for extension of time to file an appeal from the ruling and order of the Environment and Land Court at Nakuru (A.O. Ombwayo) delivered on 22nd September 2023 in ELC Case No. 16 of 2022)*

**RULING**

1. The Notice of Motion before me is dated 5<sup>th</sup> October 2023. It is stated to be governed by Rule 102 (3) of the Appellate Jurisdiction Act (*sic*), sections 1A, 1B, 3A, 63 (e) 79 and 79G of the Civil Procedure Act, order 50 rule 6 and order 51 rule 1 of the Civil Procedure Rules and Rule 4 of the Court of Appeal Rules. At the onset, I must point out that this court derives its jurisdiction solely from the Appellate Jurisdiction Act and the Rules thereunder. It therefore befalls that any provisions cited outside the



precincts of that statute do not apply to the present application. I should politely say that any party approaching this Court should, at the very minimum, know the applicable rules.

2. Having said that, the applicants pray for leave to file their appeal out of time from the ruling and order of the Nakuru ELC in Case No. 16 of 2022 delivered on 22<sup>nd</sup> September 2023. The application is buttressed by the grounds on its face and the supporting affidavit of the 1<sup>st</sup> applicant. The facts giving rise to this application are that the applicants filed suit in Nakuru ELC Case No. 16 of 2022. The applicants later filed their Notice of Motion dated 8<sup>th</sup> July 2023. In his ruling dated 22<sup>nd</sup> September 2023, Ombwayo, J. found that the application lacked merit and was dismissed with costs. The applicants lamented that they were however not aware that their submissions were not considered yet were emphatic that they had been filed. They were thus unhappy that their submissions were not considered by the learned judge. For those reasons, the applicants beseeched this Court to grant the orders sought since they are very much interested in prosecuting their appeal against those orders.
3. The application was not opposed. The application was nonetheless canvassed by way of written submissions. The applicant was the only party that filed its written submissions. Dated 8<sup>th</sup> September 2023, they urged this Court to allow the application as prayed.
4. The discretionary power to file an appeal out of time is set out in Rule 4 of this *Court's Rules*. The governing principles were set out by this Court in the case of *Wasike v Swala* [1984] KLR 591 as follows:

“As Rule 4 now provides that the Court may extend the time or such terms as it thinks just, an applicant must now show, in descending scale of importance, the following factors:

- a. That there is merit in his appeal.
- b. That the extension of time to institute and/or file the appeal will not cause undue prejudice to the respondent; and
- c. That the delay has not been inordinate.”

5. I have considered the application and the ground enunciated therein. Firstly, I note that the applicants have not demonstrated why they were out of time in filing their notice of appeal. They were only complaining that their submissions at trial were not considered. However, no reasons were furnished as to justify the delay in filing the notice of appeal late. In addition to the reason for the delay, another ground that this Court is also called upon to consider is the merits or otherwise of the appeal. I have anxiously looked at the impugned ruling. The learned judge held in part:

“After considering the application, I have noted that the plaintiffs have only sought for interim orders that were seeking to expunge the replying affidavit filed on 13<sup>th</sup> May 2023 pending the hearing and determination of the application inter partes. It is my view that the appropriate relief would have been to seek orders pending the hearing and determination of the suit.

Moreover, I do find no merit in the application as the replying affidavit is properly on record as the deponent is a party and that she was sued as opposed to the allegations by the applicants that she lacks the authority to sue. Furthermore, the supporting affidavit to the application herein is incomprehensible. In view of the foregoing, the plaintiffs' Notice of Motion application dated 6<sup>th</sup> July 2023 lacks merit and is dismissed with costs.”



6. It is apparent that the Notice of Motion before the trial court only sought interim relief. It was, therefore, overtaken by events. In addition, the orders sought were moot as the particular respondent had filed its Replying Affidavit. At this stage, I can safely say that I am not satisfied that the applicant has demonstrated that the intended appeal has merit. I say no more.
7. In view of my foregoing analysis, I find that the application herein lacks merit. It is dismissed with no orders as to costs.

**DATED AND DELIVERED AT NAKURU THIS 9<sup>TH</sup> DAY OF APRIL 2025.**

**M. GACHOKA C.Arb, FCIArb.**

**JUDGE OF APPEAL**

I certify that this is a True copy of the original

*signed*

**DEPUTY REGISTRAR**

