



Sande v Board of Trustees Church of God East Africa (Mwihila Mission) (Civil Application E096 of 2024) [2025] KECA 851 (KLR) (16 May 2025) (Ruling)

Neutral citation: [2025] KECA 851 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION E096 OF 2024
F TUIYOTT, JA
MAY 16, 2025**

BETWEEN

MICHAEL SANDE APPLICANT

AND

THE BOARD OF TRUSTEES CHURCH OF GOD EAST AFRICA (MWIHILA MISSION) RESPONDENT

(Being an application for extension of time to file an Appeal out of time from the judgment of the Environment and Land Court at Kakamega (N.A. Matheka, J.) dated 30th November, 2021 in ELC Case No. 334 of 2017)

RULING

1. There is before this Court an application for extension of time dated 18th July, 2024 to file and serve a notice of appeal and a record of appeal out of time against the decision of the N.A. Matheka J. dated 30th November, 2021 and delivered by D.O. Ohungo J. on the 14th December, 2021 in ELC Case No. 334 of 2017.
2. In an affidavit sworn on even date, Michael Sande, the applicant deposes that the judgement was delivered on 14th December, 2021 without notice to the applicant or his counsel and for that reason neither of them attended court. He contends that he became aware of the judgment on 22nd February, 2024 and instructed his then counsel on record to file an application to seek leave to file an appeal out of time but unfortunately counsel did not do so. In addition, the proceedings and decree were applied for but were not instantly supplied to the applicant's counsel. He adds that the delay in seeking leave to appeal immediately was also contributed to by execution proceedings which resulted to his arrest and committal to civil jail for some time before he was released. He pleads with this Court to allow the application as the failure to file the appeal in time and application for leave was not intentional



- and the circumstances he encountered were pardonable. He argues that the respondent will not suffer prejudice as it is still the registered owner of the suit land and in any event has already been paid costs.
3. The application is opposed by the respondent through the replying affidavit of James Obunde, the Arch-Bishop and a member of Board of Trustees of the respondent sworn on 26th September, 2024. He contends; that the judgment having been delivered on 14th December, 2021, the application herein is 2 years and 7 months late without justifiable reasons or explanation; that the explanation given by the applicant that the delay was occasioned by his advocates' failure to act on his instructions is not supported by proof as the said advocates have not deposed to that delay yet they are still on record for the applicant; and that the alleged mistake of counsel does not cure the applicant's own inaction. Further, that the superior court issued a notice of the delivery of judgment on 6th December 2021 to both the applicant and his counsel and they deliberately chose not to attend court. He points out that the applicant had even on 31st January 2022 written to the court requesting for copies of proceedings and judgment meaning that by that date, he was aware of the judgment. In addition, the certificate of delay annexed to the applicant's application shows clearly that the applicant requested for copies of the proceedings and judgement and the same were ready for collection by 20th June 2022 and the applicant does not explain why it took him over 2 years to file the present application. He further contends that the applicant is being untruthful as he was served with a copy of the decree and was well aware of the taxation process which resulted in warrants for his arrest. He argues that the applicant was committed to civil jail on 6th October 2023 and released on 15th November 2023 upon giving a proposal of how he intended to settle the costs and the applicant cannot, therefore, hinge on this explanation for the delay.
 4. Both parties have filed their submissions which I shall not reproduce as they are a regurgitation of their positions stated above.
 5. Rule 4 of the Court of Appeal Rules, 2022 grants to a single judge, sitting on behalf of the Court, power to extend time for the doing of any act authorized or required by the rules of this Court. This discretionary power, though unfettered, is guided by well settled considerations. These are; the length of the delay; the reasons for the delay; (possibly) the chances of the appeal succeeding if the application is granted; and prejudice to the respondent if the application is granted. See *Leo Sila Mutiso v Rose Hellen Wangari Mwangi – Civil Application No. Nai 251 of 1997*.
 6. Rule 77 of the rules of this Court requires that a notice of appeal ought to be filed within 14 days of the date of the decision it intends to challenge. The impugned decision herein was delivered on 14th December, 2021 and the notice of appeal ought to have been filed by 20th January, 2022 (this excludes the Christmas recess period from 21st December, 2021 to 12th January, 2022 in accordance with rule 3(e) of the Rules of this Court). None has been filed since then and this application dated 18th July, 2024 seeking leave to do so out of time, is 2 years 7 months late.
 7. What reasons were given for this inordinate delay? The applicant lists a number of reasons. First, that he was not aware of the judgment until 22nd February 2023. Secondly, that his counsel on record failed to file the present application as instructed by him immediately when he discovered that the judgment was already delivered. Last, that the execution proceedings filed by the respondent which subsequently led to his arrest and committal to civil jail delayed him from pursuing an appeal timeously.
 8. From the material before me, it is clear that the applicant is less than candid. There is a letter by the applicant himself dated 31st January 2022 requesting for the copies of the proceedings and judgment. There is also a certificate of delay dated 23rd January, 2023 which corroborates that the applicant applied for the typed proceedings and judgment on 27th January, 2022, and that the same were ready for collection on 20th June, 2022. Clearly, the applicant was aware of the judgment on 31st January,



2022 when he bespoke its certified copy or at least by 20th June, 2022 when the copy was supplied to him. In addition, and by his own admission, he was committed to civil jail on execution proceedings arising from the impugned judgment. He was released from civil jail on 15th November 2023 and this application was still filed 8 months later. The reasons for all these considerable delays are not only based on untruths but do not satisfactorily explain the inordinate delay.

9. The application dated 18th July, 2024 is therefore dismissed with costs.

DATED AND DELIVERED AT KISUMU THIS 16TH DAY OF MAY, 2025.

F. TUIYOTT

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JUDGE OF APPEAL

I certify that this is a true copy of original.

Signed

DEPUTY REGISTRAR.

