



REPUBLIC OF KENYA



KENYA LAW
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**Komu v Komu & another (Civil Application E715 of 2023)
[2024] KECA 168 (KLR) (23 February 2024) (Ruling)**

Neutral citation: [2024] KECA 168 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E715 OF 2023
F TUIYOTT, JA
FEBRUARY 23, 2024**

BETWEEN

JOSEPH MUREITHI KOMU APPLICANT

AND

PETER GITHIU KOMU 1ST RESPONDENT

**CHEGE NDUVA (SUED AS THE LEGAL REPRESENTATIVE OF SULEIMAN
NDUVA KAIRIE) 2ND RESPONDENT**

*(Being an application for extension of time to file a Notice of Appeal and the
Record of Appeal out of time from the judgment of High Court of Kenya at
Thika (B.M. Eboso, J.) dated 6th July, 2023 in THIKA ELC Appeal No. 1 of 2018)*

RULING

1. Before me is a Notice of Motion dated 31st August, 2023 in which Joseph Mureithi Komu, the applicant, seeks leave of this Court to file a notice of appeal and a record of appeal out of time against the decision of Eboso, J. delivered on 6th July, 2023 in Thika ELC Appeal No. 1 of 2018.
2. In support of the application is his affidavit sworn on even date in which he deposes that the reason for delay in filing the notice of appeal was as a result of giving late instructions to his advocate on record. He states that it took time to reach his advocate hence the lateness. He urges this Court to apply the oxygen rules in granting him justice as his appeal raises serious legal and constitutional questions with overwhelming chances of success. To his affidavit is attached a draft memorandum of appeal.
3. The application is unopposed as neither of the respondents filed any documents either in support of or opposition to the application.



4. In his submissions, the applicant dwells very substantially on the strength of his intended appeal, a consideration that is not pivotal in the exercise of single Judge's discretion to extend time for filing a notice of appeal or appeal out of time.
5. Rule 4 of the *Court of Appeal Rules*, 2022 which gives this Court the discretion to extend time for the doing of something prescribed by the rules or order of Court, though unfettered, is guided by well settled principles. 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 the degree of 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. This application dated 31st August, 2023 comes just over a month after the judgment was rendered on 6th July, 2023. The delay in filing the notice of appeal within the requisite timeframe of Rule 77(2) of the *Rules of this Court* is attributed to the applicant's inability to reach his advocate in good time. While this may not be the most acceptable of reasons, I am inclined to excuse it because this plea to extend time and to make amends has been brought promptly. Further, I exercise my discretion in favour of the applicant bearing in mind that the respondents have, in their silence, failed to demonstrate that they will suffer any prejudice if the application were to be granted.
7. The application dated 31st August, 2023 is allowed. The applicant shall file and serve a notice of appeal and record of appeal within 45 days of this Order. Costs of this application shall be in the intended appeal.

DATED AND DELIVERED AT NAIROBI THIS 23RD DAY OF FEBRUARY 2024.

F. TUIYOTT

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JUDGE OF APPEAL

I certify this is a true copy of the original.

Signed

DEPUTY REGISTRAR

