



**Oketch v Attorney General (Civil Application E008 of 2023)
[2024] KECA 138 (KLR) (9 February 2024) (Ruling)**

Neutral citation: [2024] KECA 138 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION E008 OF 2023
JM NGUGI, JA
FEBRUARY 9, 2024**

BETWEEN

NASHON SEWE OKETCH APPLICANT

AND

ATTORNEY GENERAL RESPONDENT

(Being an Application to allow Applicant to appeal as a pauper and Extension of time to file and serve the Memorandum of Appeal and Record of Appeal against the Judgment of the Environment and Land Court at Kisumu, (Ombwayo, J.) dated 24th March, 2021 in ELCA Case No. 13 of 2019)

RULING

1. The undated application by the applicant was conveyed to this Court for determination. The applicant is acting pro se, and, indeed, his first prayer is that he be granted leave to appeal as a pauper since he simply has no means to raise the required court fees. His other substantive prayer is for extension of time to appeal against the judgment of the Environment and Land Court sitting at Kisumu (Ombwayo, J.) dated 24th March, 2021.
2. The application is supported by the affidavit of the applicant sworn on 21st December, 2022.
3. Unfortunately, the application is sparse on detail and economical with information. At paragraph 2, the applicant deposes that he is a pauper who is “not possessed of sufficient means to enable [him] to pay the required court fees.” In the next paragraph, we learn that he was a businessman who owns a parcel of land known as LR No. 2659 at Manyatta “A” and that part of that property was compulsorily acquired by the government without compensation. We also learn that he has no investments or savings to enable him to pay the requisite court fees.
4. In the affidavit, we learn nothing at all about the judgment against which he wishes to appeal against. The judgment is not attached to the affidavit. We also do not know why he took more than twenty



months to approach the Court with the present application. No attempt at all has been made to explain the delay. Neither is there an attempt to explain why the appeal might be arguable. The one-paragraph written submissions filed do not illuminate matters any further.

5. All these failures are, of course, understandable. The applicant is acting in person. It is not clear what his level of formal (legal) literacy is but it is enough that he is a layman seeking to be declared a pauper for legal purposes to elicit judicial empathy.
6. This Court might well have been willing to declare the applicant a pauper to absolve him from paying court filing fees based on the little information he has availed.

Unfortunately, the main relief the applicant seeks – extension of time - can only be granted within the legal confines of rule 4 of the *Court of Appeal Rules*. That is the Rule which empowers this Court to grant extension of time. It provides that:

The court may, on such terms as it thinks just, by order extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.

7. The principles on which this Court may exercise the discretion to extend time under rule 4 were set out in *Leo Sila Mutiso v Hellen Wangari Mwangi* 2 EA 231 in which it was held as follows:

It is now settled that the decision whether to extend the time for appealing is essentially discretionary. It is also well stated that in general the matters which this court takes in to account in deciding whether to grant an extension of time are, first the length of the delay, secondly the reasons for the delay, thirdly (possibly) the chances of the appeal succeeding if the application is granted and fourthly the degree of prejudice to the respondent if the application is granted.

8. While the Court has wide discretion in granting the relief, the discretion must be exercised judicially; not whimsically or capriciously. The Court is obligated to consider the length of delay – in this case almost two years; an objectively long delay. The Court is obligated to consider the reasons for the delay – in this case there has been no explanation at all for it. The Court may consider the chances of the appeal succeeding in this case we have simply no way to tell since we neither have a copy of the judgment appealed from nor enumerated grounds of appeal.
9. In short, no matter how much judicial empathy the personal profile of the applicant triggers in the Court, the application he has placed before the Court cannot succeed. It must be dismissed and I hereby do so though without relish. The respondent did not participate in the proceedings so the applicant will not have to suffer the further immiseration of paying costs.
10. Orders accordingly.

DATED AND DELIVERED AT KISUMU THIS 9TH DAY OF FEBRUARY, 2024.

JOEL NGUGI

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JUDGE OF APPEAL

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

Signed



DEPUTY REGISTRAR

