



**Moracha v Njuguna (Civil Application E365 of 2023)
[2024] KECA 331 (KLR) (28 March 2024) (Ruling)**

Neutral citation: [2024] KECA 331 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E365 OF 2023
PO KIAGE, JA
MARCH 28, 2024**

BETWEEN

RICHARD MORARA MORACHA APPLICANT

AND

RUTH WAMUCHA NJUGUNA RESPONDENT

(An application for extension of time to file and serve a notice of appeal and memorandum of appeal out of time in an intended appeal from the judgment of the Environment and Land Court at Nairobi (Angote, J.) dated 30th September, 2023 in ELC Case No. 181 of 2018)

RULING

1. The motion dated 1st August 2023 seeks an order for leave to file and serve the notice of appeal and memorandum of appeal out of time. The applicant seeks to challenge the judgment of the Environment and Land Court (Angote, J) delivered on 30th September 2023.
2. In the grounds and supporting affidavit sworn on the said 1st August 2023, the applicant explains that he was not notified of the delivery of the judgment by his previous advocates “until late March 2023” when he personally enquired at the registry and “was informed that judgment had long been entered” on the aforesaid date. A notice of appeal was subsequently lodged thorough late, and he believes he has an arguable appeal.
3. The respondent resists the application by the lengthy replying sworn on 8th August 2023 in which she asserts her right to the land in dispute and exploits the correctness of the impugned decision. More to the point, she avers that the applicant was fully aware of the judgment and even attempted to have the title documents changed to his name at the Lands Office where he even supplied a copy of the judgment. Moreover, on 3rd November 2022 the respondents’ advocates served the decree upon the applicant’s advocates. The applicant himself kept sending emissaries to her to try and settle the matter post-judgment. The applicant’s new advocate even filed an application dated 28th March 2023 for leave



to come on record for the applicant in the court below notwithstanding a consent filed between them and the previous advocates for them to come on record, dated 6th March 2023.

4. The respondent contends that the applicant did not explain his inaction and the delay of over 9 months is inordinate, and he is undeserving of my discretion due to his indolence and delay as defects equity. It is urged that the applicant has not met the conditions set by the Supreme Court in *Nicholas Kiptoo Arap Salat v IEBC & 7 others* [2014] eKLR.
5. The applicant filed a further affidavit sworn on 16th August 2023 in which he stated that the replying affidavit confirms that his previous advocates “grossly mismanaged” his case and asked to be himself excused for the lapses and delay for which he believes he is not liable.
6. I have carefully considered this application in line with settled principles under which I exercise my discretion. With respect, it is clear to me that the 9-month delay in filing this application is in the circumstances long, and inordinately so. Even were I to assume, at my most gracious best, that the applicant became aware of the judgment “in late March 2023” as he swears without specifying the date, it cannot escape my mind that it was not until 1st August, more than 4 months later, that he filed this motion. That delay is long and unexplained on a plane of plausibility.
7. I think the facts of this case clearly show that it would be unconscionable and would work to the prejudice of the respondent were I to grant this motion in the face of what the respondent, citing a notorious equity maxim, calls indolence.
8. In the result, the motion is without merit and it is dismissed with costs.

DATED AND DELIVERED AT NAIROBI THIS 28TH DAY OF MARCH, 2024.

P. O. KIAGE

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

