



REPUBLIC OF KENYA



KENYA LAW
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**Muindi v Muindi (Civil Application E157 of 2023)
[2024] KECA 373 (KLR) (28 March 2024) (Ruling)**

Neutral citation: [2024] KECA 373 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E157 OF 2023
PO KIAGE, JA
MARCH 28, 2024**

BETWEEN

TERESA MWELU MUINDI APPLICANT

AND

WAMBUA MUINDI RESPONDENT

(An application for extension of time for giving notice of appeal, and for leave to appeal out of time from the judgment of the High Court at Kiambu (L. N. Mutende, J.) dated 11th October, 2017 in Civil Appeal No. 57 of 2016)

RULING

1. The motion dated 12th April 2023 seeks an extension of time and leave to file appeal out of time from the judgment of the High Court at Kiambu delivered, remarkably, on 11th October 2017.
2. The applicant also prays that the costs of the motion be borne by, again quite remarkably, the respondent.
3. The grounds on the face of the motion are that the applicant has a meritorious appeal but was not able to file a notice of appeal within the required time “due to her financial situation” and that it would be on the interests of substantive justice that the motion be allowed and the respondent will not suffer any prejudice. Those grounds are repeated in the applicant’s supporting affidavit sworn on 12th April 2023. By way of explaining the patently lengthy delay, she swore at paragraph 3 that;

“My advocate informed me of the judgment and (sic) I was not able to file the notice of appeal within time because of my financial situation and lack of advice on my right of appeal by my advocate.”

4. The motion was opposed by the respondent, on whose behalf was filed a replying affidavit, grounds of opposition and submissions. The gist of the opposition is discernible from the submissions in which



it is contended that the applicant was all along represented before the magistrate's court and before the High Court by a succession of "very able counsels" (sic) who are named. It is submitted, further, that from 11th October to the date of the application was a long time, over 6 years, and that;

"Contrary to the applicant's allegations that she lacked finances and legal counsel... all the counsels (sic) who represented her were not pro bono so she is not poor as she alleges. Further, for many years after the deceased's demise (2005) she used the subject property exclusively for her benefit..."

5. I did not see any further or supplementary affidavit challenging those assertions by the respondent, more expressly stated is the replying affidavit of Wambua Muindi, that the applicant financed all the several advocates who pleaded for her and "the allegations of her financial situation are false."
6. I have given this application due consideration and must observe at once that the 6-year delay, on the face of it, and unless explained, would disentitle an applicant to a favourable exercise of my discretion, wide and unfettered though it be. The length of delay is a major consideration in a Rule 4 application, so that if it is long and inordinate, such application for extension of time ought to fail.
7. Has the applicant given a plausible explanation for the indubitably long and inordinate delay? I think not.
8. All she has done is vaguely state that she did not file a notice of appeal in time because of her financial situation. She does not say what that financial situation was, nor does she say when and in what manner that situation, whatever it be, changed. I think it would not be a rational and judicious exercise of discretion for me to extend time when no discernible reason has been offered for the delay- and especially one so long. A notice of appeal is the simplest of documents and I very much doubt that its filing entails any serious financial outlay. I am unpersuaded by the reason proffered.
9. I notice that in the affidavit, the applicant states that her advocate did not explain to her the right of appeal. I find this a little of an incredible stretch given the averment, without controvert, that the applicant had used several advocates and had been involved in all manner of applications in the superior court below. I doubt that she was unaware of the said right of appeal. Plus, not having denied that she paid all of those lawyers, her earlier plea of "financial circumstances" is unpersuasive. Moreover, if one be a pauper, our Rules make provision for one to apply to be allowed to file papers in court sans payment of filing fees.
10. In light of what I have observed, it is inevitable that this application fails and I accordingly dismiss it with costs.

So ordered.

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

