



REPUBLIC OF KENYA



**Mwangi v Njoroge & another (Civil Application E387 of 2023)  
[2024] KECA 381 (KLR) (28 March 2024) (Ruling)**

Neutral citation: [2024] KECA 381 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E387 OF 2023  
PO KIAGE, JA  
MARCH 28, 2024**

**BETWEEN**

**ESTHER WACHEKE MWANGI ..... APPLICANT**

**AND**

**JOSEPH MBAU NJOROGE ..... 1<sup>ST</sup> RESPONDENT**

**JORETH LIMITED ..... 2<sup>ND</sup> RESPONDENT**

*(An application to extend time for filing a record of appeal out of time in an intended appeal against the judgment of Environment and Land Court at Nairobi (Obaga, J.) dated 29th October, 2020 in ELC Case No. 586 of 2008))*

**RULING**

1. The motion before me dated 9<sup>th</sup> August 2023 and brought under Rule 4 of the [Court of Appeal Rules 2022](#) prays for extension of time beyond the earlier granted 30 days for the filing of a record of appeal from the judgment of the Environment and Land Court delivered on 29<sup>th</sup> October 2020.
2. In the grounds on the face of the motion, as well as in the supporting affidavit of the applicant sworn on 31<sup>st</sup> July 2023, it is revealed that he did file an application for extension of time being Civil Application No. E425 of 2021 dated 1<sup>st</sup> December 2021. The same was canvassed before my learned brother Kantai, JA who, by a ruling dated 25<sup>th</sup> February 2022, granted him leave to file notice of appeal “within 14 days of today and record of appeal within 30 days thereafter.”
3. The applicant then says that her advocates filed a notice of appeal “well within the granted 14 days” on 9<sup>th</sup> March 2022 but a signed copy of the same was not released to them by the ELC despite follow up for the same and the earlier requested typed proceedings. Apprehensive that he would not meet the time set by Kantai, JA, he made an application dated 12<sup>th</sup> April 2022 for further extension of time but this was not listed for hearing despite being urgent.



4. Ultimately, on 30<sup>th</sup> June 2023 the applicant obtained a certificate of delay dated 30<sup>th</sup> June 2023 from the ELC out of the time directed, hence the current application. The applicant believes that the grant of the same would not prejudice the respondent.
5. I have considered the motion and note that whereas quite a considerable time has passed since Kantai, JA gave his order on 25<sup>th</sup> February 2022, it cannot be said that the applicant has been indolent. He filed his notice of appeal within the time given. He says he was prevented from filing and serving the record of appeal by the unavailability of typed proceedings despite his stated efforts to follow up. Once a certificate of delay issues, as happened herein, the days it took to prepare the proceedings are to be excluded in the computing of time stated in the Rules. There is no express provision that the said certificate of delay would be equally efficacious where the time being reckoned is that ordered by a judge of this Court. And it is perfectly understandable that the applicant would err on the side of the caution by seeking extension of time.
6. I note that an earlier application was made dated 12<sup>th</sup> April 2022 which has apparently not been listed for hearing. I mention it only to show that the applicant did not go to sleep and did make timely effort not to run afoul the time parameters imposed by the learned judge. I also note that there appears to be no replying affidavit or other answer filed by the respondent in opposition to the application.
7. In a Rule 4 application, my discretion is wide and unfettered to be exercised on sound principle with a view to meeting the ends of justice. Among the matters I would consider in deciding such an application are: the length of delay; the reason for delay; (possibly) the chances of the appeal succeeding; and the likelihood of prejudice to the respondent, should it be granted.
8. I think that given the explanation proffered and the efforts made to follow up on the notice of appeal and the proceedings, as well as prior attempts to extend the time directed by Kantai, JA, the applicant has placed before me ample material upon which I should look upon his application with favour.
9. Being of that mind, I allow this application and direct that the notice of appeal, if filed and served, shall be deemed to be validly filed and served. If not yet filed or served, the same shall be effected within seven (7) days hereof. The record of appeal shall also be lodged and served within fourteen (14) days of the date hereof. If that has already occurred the record shall be deemed to be properly filed and served.

The costs of the motion shall be in the intended appeal.

DATED AND DELIVERED AT NAIROBI THIS 28<sup>TH</sup> 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**

