



REPUBLIC OF KENYA



KENYA LAW
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Buxton Point Apartments Ltd & 2 others v Gele t/a Buxton Filling Station & 3 others (Civil Appeal (Application) E085 of 2023) [2024] KECA 435 (KLR) (12 April 2024) (Ruling)

Neutral citation: [2024] KECA 435 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT MOMBASA
CIVIL APPEAL (APPLICATION) E085 OF 2023**

AK MURGOR, JA

APRIL 12, 2024

BETWEEN

BUXTON POINT APARTMENTS LTD 1ST APPLICANT

HON SULEIMAN SHABAL 2ND APPLICANT

ROTON CONSTRUCTION CO LTD 3RD APPLICANT

AND

**ABDULLAH AHMED GELE T/A BUXTON FILLING STATION 1ST
RESPONDENT**

**CHIEF OFFICER, LAND, HOUSING & PHYSICAL PLANNING COUNTY
GOVERNMENT OF MOMBASA 2ND RESPONDENT**

COUNTY GOVERNMENT OF MOMBASA 3RD RESPONDENT

THE CHIEF LAND REGISTRAR 4TH RESPONDENT

(An application for the extension of time to file and serve a Record of Appeal out of time against the Ruling/Order of the Environment and Land Court at Mombasa (Naikuni, J.) delivered on 27th March 2023 in Mombasa E.L.C No. 44 of 2021)

RULING

1. By a Notice of Motion dated 13th September 2023, brought pursuant to sections 3A and 3B of the *Appellate Jurisdiction Act*, rule 4 of the *Court of Appeal Rules*, 2010 and Article 159 2(d) of *the Constitution*, the applicants, Buxton Point Apartments Ltd, Hon. Suleiman Shahbal and Roton Construction Co. Ltd seek (i) that this Court be pleased to extend time for lodging and serving the Record of appeal against the Judgment/Decree of the Environment and Land Court at Mombasa delivered on 27th March 2023 in Mombasa E.L.C No. 44 of 2021 Abdullahi Ahmed Gele t/a Buxton



Filling Station vs the Chief Officer, Land, Housing & Physical Planning County Government of Mombasa & 6 others (ii) that the Record of appeal dated 13th September 2023 and filed on 15th September 2023 be deemed as properly filed and (iii) that the costs of this application abide the intended appeal.

2. The Notice was brought pursuant to the grounds on its face and on affidavit in support sworn by Judy W. Thuku counsel for the Applicants in which she contended that the Environment and Land Court at Mombasa delivered its ruling with respect to a Notice of Motion dated 4th February 2022 on 27th March 2023, where the court found the applicants to be in contempt of the court orders and ordered for summons to issue to the applicants' directors to appear in court on 22nd May 2023; that the applicants being aggrieved by the Ruling intend to appeal against it, and that the Notice of appeal has been duly served upon the respondents. It was further contended that the delay in lodging and serving the Record of appeal was occasioned by the delay of the lower court Registry in supplying the applicants with the certified typed copies of the proceedings, despite the applicants having requested for them since 27th March 2023; that considering the circumstances of the delay and the reasons explaining the delay, it was urged that this application should be allowed, and that no prejudice will be occasioned to the respondents if the orders sought are granted.
3. When the matter came up for hearing on 7th February 2024 on a virtual platform, learned counsel Ms. Oloo holding brief for Ms. Thuku appeared for the applicant, while learned counsel Mr. Abdiaziz appeared for the 1st respondent, Ms. Oloo who was also holding brief for Mr. Kilonzo for the 2nd, 3rd and 4th respondents were in Court. There was no appearance for the 5th respondent though served with the hearing notice.
4. During the hearing, counsel drew the Court's attention to a Consent letter dated 20th November 2023 signed by the parties indicating that they are agreeable to compromising the applicants' application dated 13th September, 2023.
5. Therefore, the respondent's counsel having confirmed the position to be as set out in the Consent letter dated 20th November, 2023, the application be and is hereby is allowed. Consequently, the Record of Appeal dated 13th September 2023 and filed on 15th September 2023 is hereby deemed as properly filed and served on all the parties. No orders as to costs.

It is so ordered.

DATED AND DELIVERED AT MOMBASA THIS 12TH DAY OF APRIL, 2024

A. K. MURGOR

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR

