



**Munge v Oloirien Group Ranch (Suing through its representatives Moiko Oloiputa Miaron) & 7 others (Civil Application E033 of 2023) [2024] KECA 458 (KLR) (12 April 2024) (Ruling)**

Neutral citation: [2024] KECA 458 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CIVIL APPLICATION E033 OF 2023**

**WK KORIR, JA  
APRIL 12, 2024**

**BETWEEN**

**JANE NAISIANOI MUNGE ..... APPLICANT**

**AND**

**OLOIRIEN GROUP RANCH (SUING THROUGH ITS REPRESENTATIVES)  
MOIKO OLOIPUTA MIARON) ..... 1<sup>ST</sup> RESPONDENT**  
**JULIUS OLE MOKITA ..... 2<sup>ND</sup> RESPONDENT**  
**SALATON OLELEKUMO NAITIRA ..... 3<sup>RD</sup> RESPONDENT**  
**YIAKON OLE KARIOKI ..... 4<sup>TH</sup> RESPONDENT**  
**LENKANKA OLE NARASHA ..... 5<sup>TH</sup> RESPONDENT**  
**NTOIKA OLE ROITEI ..... 6<sup>TH</sup> RESPONDENT**  
**SAMUEL LEKISHONI OLE SONURUA ..... 7<sup>TH</sup> RESPONDENT**  
**KIRISWA TUNAI KUYIAYIA ..... 8<sup>TH</sup> RESPONDENT**

*(Being an application for extension of time to file a notice of appeal out of time to the decision of Environment and Land Court at Kilgoris (E. Washe, J.) dated 6th October, 2022 in ELC Case No. 9 of 2021)*

**RULING**

1. The notice of motion by the applicant, Jane Naisiano Munge, is dated 21<sup>st</sup> March 2023. Her substantive prayer is for leave to file a notice of appeal and a record of appeal out of time against the decision of E. Washe J. delivered on 6<sup>th</sup> October 2022 in Kilgoris Environment and Land Court (E&LC) Petition No. 9 of 2021. The application is supported by the grounds on its face and the affidavit sworn by the applicant on 21<sup>st</sup> March 2023. It is the applicant's case that she was not informed



of the delivery of the judgment by her former advocate and only knew about the existence of the judgment on 9<sup>th</sup> November 2022 when the time for lodging the notice of appeal had already lapsed. She deposed that she then proceeded to instruct another advocate and a consent for change of advocates was not adopted by the Court until 21<sup>st</sup> February 2023 paving way for the filing of the present application. Additionally, she avers that the intended appeal is arguable and the respondents will not suffer any prejudice if the application is allowed.

2. The application is opposed by a replying affidavit sworn on 17<sup>th</sup> March 2023 by Julius ole Mokita, an official of the respondent, Oloirien Group Ranch. The deponent avers that the application is vexatious and is an abuse of the Court process. He deposes that the judgment the applicant intends to appeal was delivered in the presence of the representatives of all the parties and the applicant was therefore aware of the judgment. He further avers that it is not enough for the applicant to blame the former advocates for her own failure to follow up on her case and that the alleged fault on the part of former advocates has not been proved. According to him, the applicant has not tendered sufficient reasons to explain the delay in lodging the notice of appeal or the filing of the instant application. The deponent consequently asked for the dismissal of the application.
3. The application was disposed by way of written submissions. The firm of Kibet Allan & Co. Advocates filed submissions dated 9<sup>th</sup> May 2023 on behalf of the applicant while M/s O.M. Otieno & Co. Advocates filed submissions dated 17<sup>th</sup> May 2023 on behalf of the respondent.
4. In support of the applicant's case, M/s Kibet Allan & Co. Advocates submitted that the period of delay was less than 1 year and therefore was not inordinate as there was no set minimum or maximum period of delay. Counsel submitted that what was required was for the applicant to explain the delay. With regard to the reasons for the delay, counsel reiterated the averments in the supporting affidavit of the applicant and pointed out that the delay is attributable to three factors, namely: failure on the part of former advocates; delay in adopting the consent for change of advocates; and lack of information about the delivery of the judgment and the process of appeal. It was also counsel's submission that the intended appeal was arguable and that the respondents will not suffer any prejudice if the application is allowed. Counsel therefore urged that the application be allowed. To underscore these submissions, counsel relied on numerous decisions, including *Belinda Murai & 9 others v. Amos Wainaina* [1979] eKLR; *Fabim Yasin Twaha v. Timamy Issa Abdalla & 2 others* [2015] eKLR; *Andrew Kiplagat Chemaringo v. Kipkorir Kibet* [2018] eKLR; and *Wasike v. Swala* [1984] KLR 591.
5. On the other hand, counsel for the respondent submitted that the application lacks merit and ought to be dismissed. Counsel reiterated the averments made in the replying affidavit and stressed that the judgment was delivered in the presence of the representatives of the parties and it was not enough for the applicant to lay blame for the delay on her former counsel. Counsel argued that the alleged failure on the part of the applicant's former advocates has not been proved and that it is the applicant who is guilty of indolence. Additionally, counsel submitted that the intended appeal is not arguable and that the present application is merely meant to delay the respondents' enjoyment of the fruits of a judgment entered in their favour. In the end, counsel urged that the instant application be dismissed with costs. To buttress these submissions, counsel relied on the cases of *Susan Ogutu Oloo & 2 others v. Doris Odindo Omolo* [2019] eKLR and *Charles Omwata Omwoyo v. African Highlands & Produce Co. Ltd* [2002] eKLR.



6. The principles which guide the determination of an application for enlargement of time were enunciated by the Supreme Court in *Nicholas Kiptoo Arap Korir Salat v. Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR as follows:
- “1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;
  2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court
  3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
  4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
  5. Whether there will be any prejudice suffered by the respondents if the extension is granted;
  6. Whether the application has been brought without undue delay; and
7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”
1. In my view the question for determination is whether the applicant has satisfactorily explained the delay in filing the notice of appeal and the filing of the instant application.
  2. The starting point is to consider whether there has been inordinate delay on the part of the applicant. I note that the impugned judgment was delivered on 6<sup>th</sup> October 2022 while the present application is dated 21<sup>st</sup> March 2023. The delay is approximately 6 months. Such a period of delay ordinarily cannot be said to be inordinate. Upon this finding comes the next limb as to whether the applicant has given satisfactory reasons for delay. As was held by the Supreme Court in *County Executive of Kisumu v. County Government of Kisumu & 8 others* [2017] eKLR, the whole period of delay should be declared and sufficiently explained.
  3. The main reason proffered by the applicant for the delay is that her former advocates did not notify her of the delivery of the judgment. In this regard, the holding of the Court in *Rajesh Rughani v. Fifty Investments Limited & another* [2016] eKLR comes to into view where the Court clearly stated that mere allegation of counsel’s indolence is not enough to warrant grant of extension of time. Other than laying blame on former counsel, the applicant has not shown any positive steps that she put in place to show diligence on her part.
  4. Be that as it may, even if I were to accept the applicant’s assertion that the delay was caused by her previous advocate, the pleadings disclose that the applicant knew of the delivery of the judgment on 9<sup>th</sup> November 2022 while the present application was filed on 21<sup>st</sup> March 2023. The further delay in the period between the time it was discovered that the judgment had been delivered and the date the instant application was filed cannot surely be blamed on the former counsel. The applicant has attempted to explain the inertia during this period by attributing it to the delay in adopting the consent for the change of advocates and consultations with the present advocates. In my view, these explanations are not satisfactory. The filing of a notice of appeal is a simple step that could have been undertaken by the previous advocates or the applicant herself.



11. Furthermore, I note that despite the applicant knowing of the delivery of the judgment on 9<sup>th</sup> November, 2022, the consent between the advocates was dated 9<sup>th</sup> December 2022 while the application to have the same adopted by the Court is dated 8<sup>th</sup> February 2023. The delay of over 50 days, excluding the period of the Christmas recess, between the signing of the consent and the filing of the same has not been explained. The applicant further averred that the said consent was adopted as an order of the Court on 21<sup>st</sup> February 2023. Even if I was to give the applicant the benefit of doubt, the period between 21<sup>st</sup> February 2023 when the consent was adopted and 21<sup>st</sup> March 2023 when this application was lodged remains unexplained. This being the case, and going by the dictum in *County Executive of Kisumu v. County Government of Kisumu & 8 others* (*supra*) that the entire period of delay must be disclosed and explained, I find that the applicant has failed to not only tender sufficient explanation for the delay but to also explain the whole period of delay. In the circumstances of this case, the fact that the applicant is likely to be prejudiced by the rejection of her application and that she may have an arguable appeal, cannot override her indolence and nonchalant attitude towards her case. As often stated, equity can only come to the aid of the vigilant and not the indolent.
12. In the circumstances, the application before me is for dismissal for the reasons already discussed above. As for the costs of the application, there is no reason advanced to warrant my departure from the general rule that costs follow the event. Consequently, I award the costs of this application to the respondents.
13. In the penultimate, the notice of motion dated 21<sup>st</sup> March 2023 is without merit and is hereby dismissed with costs to the respondents.

**DATED AND DELIVERED AT NAKURU THIS 12<sup>TH</sup> DAY OF APRIL, 2024**

**W. KORIR**

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**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR**

