



**Rono (Sued as the Legal Representative of the Estate of Sofia Tamarta - Deceased) & another v
Lagat; Kipkoech (Sued as the Legal Representative of the Estate of Helen Jeptum Rono) (Interested
Party) (Civil Application E009 of 2024) [2024] KECA 627 (KLR) (27 May 2024) (Ruling)**

Neutral citation: [2024] KECA 627 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT ELDORET
CIVIL APPLICATION E009 OF 2024
MA WARSAME, JA
MAY 27, 2024**

BETWEEN

ANDREW KOSKEI 1ST APPLICANT

**EMILY JEBOR RONO (SUED AS THE LEGAL REPRESENTATIVE OF THE
ESTATE OF SOFIA TAMARTA - DECEASED) 2ND APPLICANT**

AND

ESTHER JEPTANUI LAGAT RESPONDENT

AND

**DANIEL KIPKOECH (SUED AS THE LEGAL REPRESENTATIVE OF THE
ESTATE OF HELEN JEPTUM RONO) INTERESTED PARTY**

*(An application for extension of time to file a notice of appeal, lodge and serve the
record of appeal against the judgment of the Environment and Land Court at
Kapsabet (Mwanyale J) dated 30th November, 2023 in Civil Case No. E 967 of 2021)*

RULING

1. On 30th November 2023, the Environment and Land Court at Kapsabet delivered a judgment to the detriment of the applicants and the interested party to wit; a permanent injunction restraining the appellants and the interested party from entering, trespassing encroaching, ploughing or dealing in any manner with NANDI/CHEMUSWO/530. The court issued eviction orders against the applicants and the interested party and directed the respondent to issue eviction notices in accordance with Section 152(a) of the *Land Act*.
2. The applicants filed the instant application dated 28th February 2024 seeking to file a notice of appeal and record of appeal out of time. The basis for the said application as stated on the face thereof and



supported by the affidavit of the 1st applicant, is that upon delivery of the judgment, the applicants instructed their Advocates M/s Duncan Tallam and Company Advocates to file an appeal forthwith; that upon visiting the registry to collect proceedings, the 1st applicant was baffled to discover that their erstwhile advocate had failed to comply with their instructions and instead filed the notice at his leisure on 11th January 2024, resulting in a delay of about 29 days; that when they realised their Advocate was being evasive on the progress of the appeal, they immediately sought alternative counsel and engaged their current advocates who filed and served the notice of appeal and record of appeal out of time. She avers that the appeal is arguable and that the delay is neither intentional nor inordinate and that mistakes of counsel should not be visited upon innocent litigants desirous to prosecute their case.

3. The respondent opposed the application vide her replying affidavit dated 13th February 2024. She contended that the application is incompetent as no plausible delay had been given for the delay of three months in filing the application, that there is no evidence that the applicants had filed a letter requesting for typed proceedings in the first place and that she would be greatly prejudiced if the application is allowed, because it would be denying her the fruits of her judgment.

4. I have considered the application and the affidavits on record.

In considering an application of this nature under rule 4 of this Court's Rules, a single judge exercises wide and unfettered discretion, which must however be exercised judiciously and never arbitrarily or capriciously. The Court has to take into account, among other factors, the length of the delay; the reasons for the delay; whether the intended appeal is arguable or the chances of its success if the application is allowed; and the degree of prejudice to the respondent if the application is granted. See *Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi* [1977] eKLR.

5. The applicants have blamed their former Advocate for the failure to file the notice of appeal and lodge the record of appeal according to the statutory timelines despite being given timely instructions. Under Rule 77(2) of the *Court of Appeal Rules* 2022, an appellant must file their notice of appeal within 14 days. The Notice was to be filed on or before 14th December 2023. The 1st applicant affirms that after noticing that their former Advocate was not forthcoming with the status of the appeal, she went to the registry to follow up on the proceedings and discovered that the notice of appeal had been filed on 11th January 2024, which was out of time.

6. The delay is approximately 6 days. In my view, this delay is not inordinate and has been explained. This is not simply a case of a client accusing an Advocate of inaction, the applicants made substantial efforts to pursue their Advocate and follow up with the registry on the position of their case and diligently discharged their duty to pursue their own case by appointing new Advocates to conduct the matter.

7. In the circumstance I am inclined to exercise my discretion in favour of the applicants, which I hereby do. Consequently, I allow the application and direct that the notice of appeal and record of appeal be filed and served within 14 days from the date of delivery of this ruling.

DATED AND DELIVERED AT ELDORET THIS 27TH DAY OF MAY, 2024.

M. WARSAME

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

