



REPUBLIC OF KENYA



**Serem & another v Francis (Sued as the administrator of the Estate of the Late Paulo Mulinya Mudunya) (Civil Application E018 of 2024) [2024] KECA 626 (KLR) (27 May 2024) (Ruling)**

Neutral citation: [2024] KECA 626 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT ELDORET  
CIVIL APPLICATION E018 OF 2024  
MA WARSAME, JA  
MAY 27, 2024**

**BETWEEN**

**WILFRED SEREM ..... 1<sup>ST</sup> APPLICANT**

**EVERLINE CHEBITOK CHELUGUI ..... 2<sup>ND</sup> APPLICANT**

**AND**

**ELIMINA ALUSONYA FRANCIS (SUED AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE PAULO MULINYA MUDUNYA) ..... RESPONDENT**

*(An application for extension of time to file an appeal against the judgment of the Environment and Land Court at Eldoret (Kibunja, J.) dated 28th April, 2021 in Civil Case No. E 391 of 2021)*

**RULING**

1. This is an application dated 2nd May 2024 under Rule 4 of this *Court's Rules* seeking leave to file an appeal out of time against the judgment of the Environment and Land Court at Eldoret delivered on 28th April 2021.
2. The motion is supported by grounds on its face, a supporting affidavit sworn by Everlyn Chebitok, the 2nd applicant and written submissions dated 2nd May 2024.
3. The applicants assert that upon delivery of the judgment on 28th April 2021, they instructed their advocates, M/S Magare Musundi & Company Advocates to file the notice of appeal dated 28th April 2021. However, just after the judgment was delivered the 2nd Applicant fell seriously ill with Lobar Pneumonia (recurrent) which kept her bed ridden and was unable to proceed with instructions to her advocate to file an appeal, the advocate was therefore unable to proceed without instructions. In addition, the managing partner of the firm who was handling the matter was appointed to the bench making communication between the plaintiffs and the firm more complicated due to the transition period.



- 4. I have considered the application, the 2nd applicant’s supporting affidavit and the submissions made. Rule 4 of the Court of Appeal Rules grants this Court unfettered discretion to extend time which discretion ought to be exercised judiciously. In considering such an application, the Court is required to look at the length of the delay; reason for the delay; chances of the intended appeal succeeding and the degree of prejudice, if any, which would be occasioned to the respondent.
- 5. Taking into account the foregoing, I find the reasons given by the applicants’ for the delay in filing the record of appeal plausible. The 2<sup>nd</sup> applicant has attached a medical report from Mercy Health Center indicating that she was bedridden and treated for recurrent pneumonia for three years. Even now it is clear that she still undergoes follow ups and is being monitored by the clinic. Upon her slight recovery she pursued her advocate to follow up on the matter and give the necessary instructions.
- 6. As for the explanation that the Advocates inaction after being instructed to appeal was due to a lengthy three year transition period after which the managing partner had been appointed to the bench, I am not persuaded by this explanation. It is simply a case of mismanagement and indolence. A Notice of appeal signifies an applicant’s intention to appeal and the applicants promptly instructed their Advocate to file the notice of appeal which was done on 28<sup>th</sup> April 2021. This was a clear go ahead for their Advocate to continue with the required legal steps in furtherance of the appeal.
- 7. Nonetheless, I am persuaded that the inaction of Advocates should not be visited upon a client who is clearly willing to prosecute their case. Noting that the applicant’s explanation for delay is convincing, I find the delay is not inordinate taking into account that a notice of appeal had been filed timeously. For these reasons, I allow the application and exercise my discretion in favour of granting leave to file the appeal out of time, which ought to be done within the next 14 days. No orders as to cost

**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**

