



REPUBLIC OF KENYA



**National Land Commission v Vekaria & 3 others (Civil Application
E058 of 2023) [2024] KECA 598 (KLR) (24 May 2024) (Ruling)**

Neutral citation: [2024] KECA 598 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT ELDORET
CIVIL APPLICATION E058 OF 2023**

F SICHALE, JA

MAY 24, 2024

BETWEEN

NATIONAL LAND COMMISSION APPLICANT

AND

RAMJI D. VEKARIA 1ST RESPONDENT

NATHANIEL KIPTALAM LAGAT 2ND RESPONDENT

SAMWEL KING'ORI MWANGI 3RD RESPONDENT

DISTRICT LAND REGISTRAR 4TH RESPONDENT

*(eing an Application for Extension of Time to Lodge an Appeal against
the Judgment of the Environment & Land Court at Eldoret (Ombwayo
J), dated 18th March 2022 in Eldoret ELC Case No. 287 of 2012)*

RULING

1. By the Motion on Notice dated 7th November 2023, brought under Section 79G, Order 51 Rule 1 of the [Civil Procedure Rules 2010](#) and Section 3A of the [Civil Procedure Act](#) and all other enabling provisions of the law, the National Land Commission (hereinafter the applicant), has urged this Court sitting as a Single Judge to grant the following orders;
 - “i. That this Honourable Court be pleased to grant leave to the applicant to lodge an appeal out of time.
 - ii. That this Honourable Court be pleased to issue directions in regard to this matter
 - iii. That the costs of this application be provided for.”



1. The motion is supported on the grounds on the face of the motion and an affidavit sworn by Brian Ikol, Director, Legal Affairs and Alternative Justice System of the applicant, who deposed that the 1st respondent had filed Eldoret ELC Case No 287 of 2012, before the applicant's office was fully constituted.
2. That, the Hon. Attorney General entered appearance and filed a Memorandum of Appearance and statement of defence on behalf of the applicant and the 4th respondent. Thereafter the matter was heard to conclusion before the trial court and judgment delivered on 18th March 2022.
3. He further deposed that by the time the applicant became aware of the terms of the said judgment, the stipulated time within which to appeal had lapsed and that the applicant was greatly dissatisfied and aggrieved by the finding of the Honourable court particularly that the applicant was liable for the acts and/or omissions of the 4th respondent.
4. That, the applicant was desirous of lodging an appeal against the said judgment and was beseeching this Court to exercise its discretion and allow it to file an appeal out of time and that the applicant would suffer irreparable harm if the application was not allowed. Further, that the respondents would not be prejudiced in anyway if this application was allowed.
6. The motion was opposed vide a replying affidavit sworn by the 1st respondent Ramji D. Vekaria on 19th December 2023, who deposed inter alia that this Court lacked the jurisdiction to deal with the instant application having been brought under the [Civil Procedure Rules](#) instead of the [Court of Appeal Rules 2022](#). Further, that the applicant through the Office of the Attorney General fully participated in the suit at the trial and even called a witness and could now not be heard to say that it was not aware of the terms of the judgment.
7. He further deposed that on 19th December 2022 in order to escape execution, the applicant filed an application for stay of execution of judgment and obtained stay orders; that in view of the foregoing, it was clear that the applicant was well aware of the terms of the impugned judgment at the very least on 19th December 2022, when the application for stay was filed; then this which was close to one year prior to the filing of the preset application and that as such, the applicant was guilty of laches.
8. It was submitted for the applicant that that indeed they had invoked the wrong provisions of the law which was an inadvertent error and not a deliberate mistake and I was urged to excuse the mistake as the applicant may suffer the penalty of not having its case heard on merit.
9. Turning to the merits of the appeal, it was submitted that the intended appeal was arguable, as the trial court's findings as against the applicant were in excess of its mandate as it does not direct the 4th respondent on registration of private parcels of land.
10. Regarding reasons for the delay, it was submitted that the primary suit was filed in court before the applicant's office was fully constituted; then the office of the Attorney General entered appearance and filed statement of defence on behalf of both the applicant and the 4th respondent and that by the time the applicant became aware of the judgment, the stipulated time for filing the appeal had lapsed.
11. It was further submitted that the respondents would not be prejudiced in anyway if the instant application was allowed.
12. On the other hand, it was submitted by the 1st respondent that that there was no competent application before Court as the Court lacked the jurisdiction to entertain the instant application the same having



been brought under the provisions of the [Civil Procedure Rules](#) as opposed to the [Court of Appeal Rules 2022](#), wherein the Court derives its jurisdiction from.

13. It was further submitted that the application was fatal as the applicant had not sought to file or serve the Record of Appeal out of time, nor sought extension of time to serve the letter bespeaking of the proceedings.
14. Turning to the length of the delay, it was submitted that the impugned decision was delivered on 18th March 2022, and the instant motion filed after a period of 19 months, which period was inordinate considering the fact the applicant was represented in the trial court by none other than the Attorney General and that no plausible reason had been given for the delay.
15. I have carefully considered the motion, the grounds thereof, the supporting affidavit, the 1st respondent's replying affidavit, the applicant's submissions, the 1st respondent's submissions, the cited authorities and the law.
16. The principles upon which this Court exercises its discretion under Rule 4 to extend time or not have now taken a well beaten path. The Court has wide and unfettered discretion in deciding whether to extend time or not. However, in exercising its discretion the Court should do so judiciously.
17. See [Mwangi v Kenya Airways Limited](#) (2003) KLR 486 where this Court stated thus;

“Over the years, the Court has set out guidelines on what a single Judge Should consider when dealing with an application for extension of time under Rule 4 of the Rules. For instance, in *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* (Civil Application No Nai 255 of 1997 (unreported), the Court expressed itself thus;

“It is now well settled that the decision whether or not to extend time for appealing is essentially discretionary. It is also well settled that in general, the matters which this Court takes into account in deciding whether to grant an extension of time are; first the length of the delay, secondly, the reason for the delay; thirdly (possibly) the chances of the appeal succeeding if the application is granted; and, fourthly, the degree of prejudice to the respondent if the application is granted.”
18. There is no doubt that the motion as drafted is incompetent as the applicant has invoked the wrong provisions of the law as the jurisdiction of this Court to extend time or otherwise is donated to this Court by Rule 4 of the [Court of Appeal Rules 2022](#).
19. Be that as it may, in the instant case and as regards the length of the delay, it is indeed not in dispute that the impugned ruling was delivered on 18th March 2022. There has therefore been a delay of 1 year and 8 months from the date of the impugned judgment to 7th November 2023, when the instant motion was filed which delay is certainly inordinate.
20. Regarding the reasons for the delay, it was the applicant's contention that the same was due to the fact that the matter was filed in court before the applicant's office was fully constituted and that by the time the applicant became aware of the judgment, the stipulated time for filling the appeal had lapsed.
21. In my considered opinion, the reasons given for the delay are not plausible for the following reasons; first of all, during the trial, the applicant was all along represented by the Office of the Hon Attorney General.



22. Additionally, the applicant was operationalized on or above sometimes in the year 2012 and the impugned judgment was delivered in the year 2022 which is a period of about 10 years later. The applicant can therefore not be heard to say that the matter was filed in court before its office was fully constituted as the judgment therein was delivered long after the applicant was operationalized.
23. Thirdly, the applicant is guilty of non-disclosure of material facts as it has not disclosed when it allegedly became aware of the judgment by which time, if at all stipulated period for filing the appeal had lapsed.
24. Fourthly, vide an application dated 19th December 2022, the applicant, obtained stay orders on 22nd December 2022, in respect of the impugned judgment and it is therefore manifestly clear that as early as 19th December 2022, the applicant was aware of the terms of the impugned judgment contrary to its contention. In my view no reason has been forthcoming from the applicant as to why this application was filed on or about 7th November 2023, which is again 11 months from the date it filed the application for stay in the Superior Court on 19th December 2022.
25. It is in view of the foregoing that I find the reasons given for the delay not to be reasonable.
26. With regard to the possibility of the appeal succeeding, I cannot make a determination on this issue sitting as a Single Judge and I will make no further comment regarding the same.
27. As regards prejudice, no evidence has been tendered before this Court to show that indeed the applicant will suffer any prejudice if the instant motion is not allowed.
28. Given the circumstances, I find that the applicant has not demonstrated and satisfied the existence of the principles for consideration in the exercise of my unfettered discretion pursuant to Rule 4 of this Court to extend time to file the intended appeal.
29. In view of the above, the inevitable conclusion that I arrive at is that the applicant's motion dated 7th November 2023, is for dismissal.
30. Accordingly, I hereby dismiss the same in its entirety with costs to the 1st respondent.
31. It is so ordered.

DATED AND DELIVERED AT ELDORET THIS 24TH DAY OF MAY 2024.

F. SICHALE

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

