



REPUBLIC OF KENYA



**Kambi & 3 others v Chome & 9 others (Civil Application  
E004 of 2024) [2024] KECA 738 (KLR) (21 June 2024) (Ruling)**

Neutral citation: [2024] KECA 738 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT MALINDI  
CIVIL APPLICATION E004 OF 2024**

**KI LAIBUTA, JA**

**JUNE 21, 2024**

**BETWEEN**

**CHARLES PASI KAMBI ..... 1<sup>ST</sup> APPLICANT  
JOSHUA RADHI ..... 2<sup>ND</sup> APPLICANT  
AGNES KABIBI PONDA ..... 3<sup>RD</sup> APPLICANT  
COLLINS CHOME NGONYO ..... 4<sup>TH</sup> APPLICANT**

**AND**

**GIBSON CHOME ..... 1<sup>ST</sup> RESPONDENT  
CHRISTOPHER KAMBI ..... 2<sup>ND</sup> RESPONDENT  
KENNEDY MADARAKA ..... 3<sup>RD</sup> RESPONDENT  
KIPONDA KAMBI ..... 4<sup>TH</sup> RESPONDENT  
NGALA KAMBI ..... 5<sup>TH</sup> RESPONDENT  
GEORGE KAMBI ..... 6<sup>TH</sup> RESPONDENT  
ELIZABETH KAMBI KIPONDA ..... 7<sup>TH</sup> RESPONDENT  
JUMWA KAMBI ..... 8<sup>TH</sup> RESPONDENT  
MAPENZI KAMBI ..... 9<sup>TH</sup> RESPONDENT  
HELLEN KAMBI ..... 10<sup>TH</sup> RESPONDENT**

*(Being an application for extension of time to file the Memorandum and Record of Appeal out of time from the Judgment and Decree of the Environment and Land Court of Kenya at Malindi (M. A. O. Odeny, J.) delivered on 30th January 2023 in ELC No. 54 of 2019)*



## RULING

1. Before me is a Notice of Motion dated 8<sup>th</sup> February 2024 in which the applicants seek extension of time pursuant to rule 4 of the [Court of Appeal Rules](#) to file a memorandum and record of appeal from the judgment and decree of the Environment and Land Court at Malindi (M. A. O. Odeny, J.) dated 30<sup>th</sup> January 2023 in ELC Case No. 54 of 2019.
2. The applicants' Motion is supported by the annexed affidavit of Tamari Katana, learned counsel for the applicants, sworn on 8<sup>th</sup> February 2024 and is made on a whopping 14 grounds set out on the face of the Motion, but to which I need not address myself in extenso, save to take note of the salient grounds on which the application is made, namely: that the impugned judgment was delivered on 30<sup>th</sup> January 2023 dismissing the applicants' suit and the respondents' counterclaim on the ground that the court had no jurisdiction to entertain their suit; that they filed their notice of appeal on 15<sup>th</sup> February 2023; that the delay was occasioned by delivery of the judgment without notice; that they requested for typed proceedings *vide* a letter dated 16<sup>th</sup> March 2023; that the proceedings were ready and dispatched to counsel for the applicants on 7<sup>th</sup> September 2023; that the advocate in charge of the matter had an emergency child delivery that compelled her to be away on compulsory maternity leave for a period of 3 months; that failure to lodge the appeal has not been intentional; that the intended appeal has a high probability of success; that the Motion has been filed without inordinate delay; and that the respondents will not suffer any prejudice if the orders sought herein are granted.
3. In support of the Motion, learned counsel for the applicant, M/s. K. Lughanje & Company filed written submissions, list of authorities and case digest dated 30<sup>th</sup> May 2024 citing 5 judicial authorities on the factors to be considered in determination of applications for extension of time pursuant to rule 4 of this Court's Rules, and which I have taken to mind. In her oral highlights of the applicants' Motion, Ms. Naazi urged us to allow the application with orders as prayed.
4. Though served with the hearing notice on 24<sup>th</sup> May 2024, counsel for the respondents, M/s. Gicharu Kimani & Associates, have not filed any affidavit in reply to the applicants' Motion. Neither did counsel file any submissions or appear at the hearing of the Motion on the GoTo Meeting virtual platform though duly served with today's hearing notice on 24<sup>th</sup> May 2024 at 6:03 pm.
5. Rule 4 of the [Court of Appeal Rules](#) gives the Court unfettered discretion to "... extend the time limited by these Rules, or by any decision of the Court or of a superior Court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act ...," on such terms as it thinks just.
6. The four basic factors to be considered in exercise of the Court's discretion in determination of applications under rule 4 were enunciated in *Leo Sila Mutiso v Helen Wangari Mwangi* [1999] 2 EA p231. In determining whether to extend time, the Court takes into account: (i) the length of the delay; (ii) the reason for the delay; (iii) the chances of the appeal succeeding if the application is granted; and (iv) the degree of prejudice to the respondent if the application is granted. In principle, the discretion is unfettered, and there is no limit to the number of factors the court would consider so long as they are relevant.

See also [Karny Zabarya & another v Shalom Levi](#) [2018] eKLR; [Hassan Nyanje Charo v Khatib Mwashetani & 3 Others](#) [2014] eKLR; and [Patrick Maina Mwangi v Waweru Peter](#) [2015] eKLR.



7. With regard to the merit of the appeal, it is sufficient for the Applicant to demonstrate that he or she has an arguable appeal with the likelihood of success even though it is not one that must succeed (see *KCB Limited v Nicholas Ombija* [2009] eKLR).
8. The property subject of the dispute between the applicants and the Respondents was under adjudication as governed by the *Adjudication Act* (Cap. 284) pursuant to which the respondents successfully filed a claim against the applicants before Bahari Land Dispute Tribunal. Dissatisfied by the finding of the Tribunal in favour of the respondents, the Applicants filed an appeal to the Provincial Land Appeals Committee, which upheld the Tribunal’s decision, which prompted an appeal to the High Court, whose fate is not discernible from the record before me. Suffice it to observe that they subsequently filed suit in the Environment and Land Court over the same subject plots effectively challenging the preceding decisions of the Tribunal and Committee aforesaid.
9. Dismissing the applicants’ suit and the respondents’ counterclaim, the ELC found that it had no jurisdiction to deal with the matter in dispute, the subject of adjudication under Cap. 284, which raises the decisive question as to whether the applicants’ intended appeal from the decision of the ELC has any likelihood of success so as to merit extension of time pursuant to rule 4 of this Court’s Rules. Put differently, does the ELC have jurisdiction to determine disputes arising from land adjudication?
10. The question as to whether the applicants have an arguable appeal with the likelihood of success turns on the issue as to whether the ELC had jurisdiction to entertain the respondents’ suit and the applicants’ counterclaim by dint of section 13 of the *Environment and Land Court Act*, which provides:
 

“ 13. Jurisdiction of the Court

  1. The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
  2. In exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes—
    - a. relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
    - b. relating to compulsory acquisition of land;
    - c. relating to land administration and management;
    - d. relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
    - e. any other dispute relating to environment and land.”
11. To my mind, the applicants have failed to surmount the and pre-requisite first hurdle for extension of time to lodge an appeal, namely whether they have an arguable appeal with the likelihood of success, and conditional to which I would be bound to exercise the discretion to consider the remaining factors for grant of orders under rule 4. Having found that the suit and counterclaim in the ELC as well as the intended appeal go against the grain of the law and procedure in land adjudication, I need not go



further. Accordingly, I find that the applicant's Motion does not satisfy the requirements for grant of orders under rule 4 of this Court's Rules. The same fails and is hereby dismissed with no order as to costs.

**DATED AND DELIVERED AT MALINDI THIS 21ST DAY OF JUNE, 2024.**

**DR. K. I. LAIBUTA C.Arb, FCI Arb.**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

