



REPUBLIC OF KENYA



**KENYA LAW**  
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**Hailu v Kaara & another (Civil Application E144 of 2024)  
[2024] KECA 671 (KLR) (14 June 2024) (Ruling)**

Neutral citation: [2024] KECA 671 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E144 OF 2024  
S OLE KANTAI, JA  
JUNE 14, 2024**

**BETWEEN**

**ZEWDI TEFAMICHAEL HAILU ..... APPLICANT**

**AND**

**JOSEPH KINYANJUI KAARA ..... 1<sup>ST</sup> RESPONDENT**

**J. M. NJONGORO ..... 2<sup>ND</sup> RESPONDENT**

*(Being an application for leave to extend time to file the record of appeal out of time from the Judgment and Decree of the Environment and Land Court at Nairobi (L. Komingoi, J.) delivered on 30th September 2022 in E.L.C. Case No. 763 of 2012)*

**RULING**

1. The applicant, Zewdi Tesfamichael Hailu has by motion brought under rule 4 of the *Court of Appeal Rules* applied that I be pleased to extend time within which to file and serve memorandum of appeal and record of appeal out of time. In grounds in support of the motion and in her supporting affidavit she says that typed certified proceedings were applied for on time but the same were ready when time to file record of appeal had lapsed; that a Certificate of Delay was released by the court on 14<sup>th</sup> March, 2024; that proceedings, judgment and decree were applied to the applicant when time for filing an appeal had expired; that the respondents will not be prejudiced if I extend time. The applicant further explains that the 1<sup>st</sup> respondent Joseph Kinyanjui Kaara instituted a suit at the High Court against her and judgment was delivered on 30<sup>th</sup> September, 2022; that she instructed her lawyer to file an appeal; that proceedings were applied for on 21<sup>st</sup> October, 2022 and the lawyers were informed by the trial court that proceedings were ready for collection on 30<sup>th</sup> January, 2024; a decree was issued on 12<sup>th</sup> March, 2024; certificate of delay was issued on 14<sup>th</sup> March, 2024; that delay in instituting an appeal was occasioned by those reasons.



2. Attached to the motion is judgment of Environment and Land Court (ELC) where the dispute between the 1<sup>st</sup> respondent (as plaintiff) and the applicant involved enforcement of a sale agreement involving a parcel of land L.R NO. Nairobi/Block 110/237 amongst other issues. Komingoi, J. ordered the applicant to honour terms of an agreement for sale; the applicant was ordered to render details of her account to enable the 1<sup>st</sup> respondent to pay balance of purchase price; it was ordered that upon payment of balance of purchase price the 1<sup>st</sup> respondent was to take possession of the suit property and to be registered as the owner of the same amongst other orders made.
3. I have seen a Notice of Appeal which was lodged by the applicant on 11<sup>th</sup> October, 2022.
4. In a replying affidavit the 1<sup>st</sup> respondent states, *inter alia*, that the application is misconceived, scandalous, frivolous and an abuse of the process of the court "... and should be treated with extreme prejudice..."; that proceedings were ready for collection on 30<sup>th</sup> January 2024 but that the applicant refused to collect them on time; that the applicant decided to collect proceedings on 14<sup>th</sup> March, 2024; that the applicant has not met the conditions under rules 4 and 84 of the *Court of Appeal Rules*; that the 1<sup>st</sup> respondent will suffer prejudice because the litigation has taken a long time.
5. I have seen written submissions by the 1<sup>st</sup> respondent but I have not seen any from the applicant.

"It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well stated 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."

6. The principles that apply in an application of this nature are well known and were well captured in the case of *Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi* [1999] 2 EA 231 as follows: The applicant informs me that upon delivery of judgment on 30<sup>th</sup> September, 2022 she instructed her lawyers to appeal. I have seen a Notice of Appeal which was lodged on 11<sup>th</sup> October, 2022 within the time required by our rules. I have also seen a letter bespeaking proceedings dated 11<sup>th</sup> October, 2022 which was copied to the other parties as required; there is a decree issued on 12<sup>th</sup> March, 2024 and a Certificate of Delay issued on 14<sup>th</sup> March, 2024 certifying that it took 476 days to type the proceedings.
7. I note that the motion before me is dated 22<sup>nd</sup> March, 2024, less than two weeks after Certificate of Delay was issued. So there is no delay and the applicant has given a satisfactory reason why an appeal was not lodged on time.
8. As I have seen the dispute between the parties involved enforcement of a sale agreement over landed property I think the applicant should exercise her right of appeal. I cannot see any prejudice that can be suffered by the respondents if they have to go through an appeal process.
9. I allow the motion. Let the applicant lodge Record of Appeal within fourteen (14) days of today. Costs of the motion will be in the appeal.

**DATED AND DELIVERED AT NAIROBI THIS 14<sup>TH</sup> DAY OF JUNE, 2024.**

**S. OLE KANTAI**

.....

**JUDGE OF APPEAL**



I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

