



**Kimani v Gitau & another (Civil Application E022 of 2024)
[2024] KECA 681 (KLR) (14 June 2024) (Ruling)**

Neutral citation: [2024] KECA 681 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E022 OF 2024
S OLE KANTAI, JA
JUNE 14, 2024**

BETWEEN

KAMAU NJOROGE KIMANI APPLICANT

AND

ROBERT NJOROGE GITAU 1ST RESPONDENT

SIMON GITAU KAMAU 2ND RESPONDENT

(Being an application for extension of time to file a notice of appeal against the Judgment and Orders of the Environment and Land Court at Thika (J. G. Kemei, J.) dated 18th October, 2023 in E.L.C. Case No. 16 of 2020 (OS).)

RULING

1. I am asked in the main in the Motion brought under sections 3A and 3B of the [Appellate Jurisdiction Act](#) and rule 4 of the *Court of Appeal Rules, 2010* (today the *Court of Appeal Rules, 2022*) to grant leave to the applicant Kamau Njoroge Kimani to file a Notice of Appeal out of time against the whole judgment and Orders from the Environment and Land Court (ELC) at Thika delivered on 18th October, 2023 (Kemei, J.) in ELC No. 6 of 2020 (OS) and that the Notice of Appeal dated 15th January, 2024 be deemed as duly filed upon payment of requisite fees. In grounds in support of the motion and in a supporting affidavit of the applicant it is said amongst other things that judgment was delivered on the said date against the applicant but his lawyer could not immediately find him to give him that information; that the applicant is of advanced age and has no telephone; that by the time the lawyer found the applicant to get further instructions on whether to appeal time for appealing had lapsed; that the lawyer requested for proceedings and a copy of the judgment by a letter dated 30th October, 2023; that payment for proceedings and judgment was made on 2nd November, 2023 and a copy of judgment was received on 10th January, 2024 after numerous follow ups at the court registry; copies of proceedings had not been received by the time of making the application subject of this ruling and



the applicant has decided to appeal. The applicant thinks that his intended appeal raises serious triable issues; that the respondents are unlikely to suffer any prejudice should I allow the application and that the delay in making this application is not inordinate.

2. Attached to the application is a copy of the impugned judgment which dealt with questions whether the applicant in ELC Robert Njoroge Gitau was entitled to be registered as proprietor of 1 acre of land to be excised from L.R No. Kiambu/Munyu/1646 by adverse possession. The respondents in ELC were the applicant here and Joseph Njoroge Kamau and Simon Gitau Kamau. The trial court found that Robert Njoroge Gitau had proved that he was entitled to be registered as proprietor of 1 acre of land out of the said parcel and ordered accordingly. It is those orders that the applicant Kamau Njoroge Kimani intendeds to appeal.
3. I have not seen any replying affidavit from the respondents and I have noted the contents of Hearing Notice served on 14th May, 2024 at 2.12 p.m. on advocates on record for the parties. I am satisfied that parties were served for today's hearing where they were required to file written submissionS. It is only the applicant who filed written submissions which I have seen and considered.
4. The principles that guide this Court in an application of this nature are well known and were well set out in the case of *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* [1999] 2 EA 231 as follows:

“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.”

5. The applicant and his lawyer say that after judgment was delivered on 18th October, 2023 the lawyer could not find his client to relAy the outcome of the judgment; that the applicant is of advanced age and he does not have telephone facilities; that in those circumstances the lawyer was unable to obtain instructions on whether to appeal against the judgment. Further, that the trial court was asked for a copy of judgment vide a letter of 30th October, 2023, payment for the same was made on 2nd November, 2023 and a copy received on 10th January, 2024. I note that the application before me is dated 23rd January, 2024. Considering the explanation given for the delay in the matter particularly considering that the applicant, said to be a senior citizen living in a rural setting where he has no telephone facility could not be reached easily by his lawyer to be told that he had lost a case involving land. I think there is no unreasonable delay; the explanation is reasonable in the circumstances.
6. The case before the trial court involved a dispute involving land where the applicant in that court succeeded in a claim for adverse possession on 1 acre on land owned by the applicant (here) and others. Let the applicant have his day in the intended appeal.

The respondents who were duly served for the hearing have not filed any documents to challenge the motion and I am of the view that they will not be prejudiced by my grant of leave for the applicant to appeal out of time. I allow the motion. Let the applicant lodge a Notice of Appeal within ten (10) days of today. Costs of the motion will be in the appeal.

DATED AND DELIVERED AT NAIROBI THIS 14TH DAY OF JUNE, 2024.

S. ole KANTAI

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JUDGE OF APPEAL

**I certify that this is a true copy of the original
signed**

DEPUTY REGISTRAR

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