



REPUBLIC OF KENYA



**Gichuru & another v Kibiego (Civil Application E002 of 2024)
[2024] KECA 641 (KLR) (7 June 2024) (Ruling)**

Neutral citation: [2024] KECA 641 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT ELDORET
CIVIL APPLICATION E002 OF 2024
FA OCHIENG, JA
JUNE 7, 2024**

BETWEEN

NICHOLAS GICHURU 1ST APPLICANT

MESHACK RONO 2ND APPLICANT

AND

KIPKURGAT KIBOR KIBIEGO RESPONDENT

(An application for leave to amend the notice of appeal in an intended appeal and extension of time to file the amended notice of appeal against the judgment of the Environment and Land Court at Eldoret (S. M. Kibunja, J.) delivered on 13th December 2023 and leave to the Law firm of Rotuk & Co. Advocated to come on record for the 1st applicant in ELC Case No. 333 of 2013)

RULING

1. The application before me is dated 26th January 2024. The said application sought 4 substantive orders, which can be summarized as follows:
 - a. Leave to amend the Notice of Appeal issued on 29th December 2023;
 - b. Extension of time to file and serve the Amended Notice of Appeal; and
 - c. Leave to the law firm of Rotuk & Company Advocates to come on record for the 1st applicant.
 - d. Stay of execution of the judgment delivered on 13th December 2023.
1. The application is supported by the affidavit sworn by the 2nd applicant, Meshack Rono. He depones that whereas the judgment in question was delivered on 13th December 2023, the



Notice of Appeal which they filed indicted that the judgment was delivered on 15th December 2023.

2. The deponent told the court that at the time when the trial court was delivering the judgment, his advocate was absent from the court. Apparently, the applicants' advocates had closed their offices between 12th December 2023 and 8th January 2024.
3. A copy of the Notice issued by the said advocates, concerning the closure of their offices, was annexed to the supporting affidavit.
4. The said deposition, coupled with the notice which had been issued by the applicants' advocates (concerning the closure of their offices), explains the failure of the applicants' advocate to attend court on 13th December 2023.
5. Upon receipt of service of the Notice of Appeal, the respondent's counsel endorsed the said notice with the remarks; "Received under protest. Notice filed out of time and without leave contrary to Rule 77 of the *Court of Appeal Rules*".
6. Obviously, as the judgment was delivered on 13th December 2023, a notice of appeal arising therefrom ought to have been filed earlier than 29th December 2023 when the notice herein was filed in court.
7. Furthermore, the notice of appeal contained an error, as the judgment which the applicant was intent on challenging was not delivered on the date mentioned in the said notice.
8. In my opinion, the delay in filing an accurate notice of appeal has been sufficiently explained by the applicant.
9. Secondly, the delay is not, in itself, inordinate.
11. Thirdly, the lodging of an amended notice of appeal, to reflect the actual date when the impugned judgment was delivered, does not in any manner prejudice the respondent.
12. In the result, I allow the law firm of Rotuk & Co. Advocates to come on record as the advocates for the 1st applicant.
13. Secondly, I grant an extension of seven (7) days from today, to enable the applicant to file and serve the Notice of Appeal.
14. In my considered opinion, there is no need to amend the original notice of appeal, which was filed out of time. Once the applicant files a compliant notice of appeal, within the time specified herein, that would have addressed the error in the original notice of appeal.
15. Meanwhile, as regards the quest for an order of stay of execution, I do not have the requisite jurisdiction to handle the application. Accordingly, I render no determination of the prayer for a stay of execution.
16. The costs of the application shall be borne by the applicants, because the circumstance which gave rise to the need for the said application, cannot be attributed to any actions or omissions on the part of the respondent. The error in the notice of appeal, as well as the delay in lodging it in court, are matters for which the applicant and their advocates must take full responsibility; hence the order herein, on the issue of costs.

DATED AND DELIVERED AT NAKURU THIS 7TH DAY OF JUNE, 2024.

F. OCHIENG



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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

