



REPUBLIC OF KENYA



KENYA LAW
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**Busienei v Busienei & another (Civil Application E023 of 2024)
[2024] KECA 943 (KLR) (26 July 2024) (Ruling)**

Neutral citation: [2024] KECA 943 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT ELDORET
CIVIL APPLICATION E023 OF 2024
MA WARSAME, JA
JULY 26, 2024**

BETWEEN

RICHARD BUSIENEI APPLICANT

AND

SELY J BUSIENEI 1ST RESPONDENT

JACKSON K CHEBET 2ND RESPONDENT

(An application for extension of time to file a notice of appeal, against the Ruling of the Environment and Land Court at Eldoret (Obaga J.) dated 19th September, 2023 in ELC CASE No. 235 OF 2014)

RULING

1. The applicant (Richard Busienei) has filed a Notice of Motion dated 8th May 2024 invoking this Court's jurisdiction under Rule 4 of the [Court of Appeal Rules](#) 2022, Section 3A and 3B of the [Appellate Jurisdiction Act](#) and Article 148 and 159 of the [Constitution](#) seeking *inter alia* leave to extend the time to file and serve the notice of appeal, that the notice of appeal dated 2nd May 2024 be deemed as filed and extension of time to lodge the memorandum of appeal and record of appeal against the Judgment of the Environment and Land Court dated 19th September 2023.
2. The motion was supported by the applicant's affidavit sworn on 9th May 2019 where he deponed that:
 - a. Judgment was to be delivered on 27th July 2023 but they were informed by the court that the same would be delivered on notice
 - b. His Advocate wrote a letter to the Court Registry dated 1st August 2023 inquiring on the delivery of the matter and they were informed that the judgment would be delivered on notice.



- c. On 2nd May 2024, they learnt that the judgment had been delivered on 19th September 2023 in the absence of all parties, upon his Advocates being served with a taxation notice filed by the 2nd respondent.
 - d. The delay was inadvertent and excusable
 - e. No prejudice shall be suffered by the respondents.
3. The 2nd respondent filed a replying affidavit dated 14th June 2024 in opposition to the application. He averred that the application was an abuse of the court process and that the delay had not been adequately explained. He maintained that the application was an attempt by the applicant to breathe life into his case 8 months after the Environment and Land Court rendered its decision.
 4. I have considered the application and the applicant’s supporting affidavit. Rule 4 of this Court’s rules empowers this Court to exercise its unfettered discretion in extending the time prescribed by the rules for the doing of any act. The case of *Fakir Mohamed vs. Joseph Mugambi & two Others*, Civil Application No. Nai. 332 of 2004 (unreported) outlines the general principles for determining such an application as follows:

“The exercise of this Court’s discretion under rule 4 has followed a well-beaten path since the stricture of “sufficient reason” was removed by amendment in 1985. As it is unfettered, there is no limit to the number of actors the court would consider so long as they are relevant. The period of delay, the reason for the delay, (possibly) the chances of the appeal succeeding if the application is granted; the degree of prejudice to the respondent if the application is granted, the effect of the delay on public administration, the importance of compliance with time limits; the resources of the parties, whether the matter raises issues of public importance are all relevant but not exhaustively factors.”
 5. The applicant is now before me, asking that I apply the above principles in the instant case. The application has two main prayers on its face; one is the prayer to extend the time to file a notice of appeal; and the second is a prayer to extend the time for filing the record of appeal. The reason for delay has been attributed to the failure of the court to notify the applicant of the delivery of the judgment as promised. The record shows that the applicant’s Advocates made every effort to follow up with the registry on the date of delivery of the judgment as demonstrated in their letter dated 1st August 2023 and that once they became aware that judgment in the matter had been delivered, they wasted no time in filing a notice of appeal, albeit out of time and filed the instant application within a week.
 6. The applicant’s explanation has not been challenged and there is no replying affidavit filed by the respondent. Consequently, I am satisfied that that explanation is genuine and allow the applicant’s application to the extent that I extend time for filing and serving the notice of appeal and record of appeal.
 7. I hereby direct the applicant to file the notice of appeal within 7 days of this decision with no orders as to costs.

DATED AND DELIVERED AT NAIROBI THIS 26TH DAY OF JULY, 2024.

M. WARSAME

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JUDGE OF APPEAL

I certify that this is a true copy of the original.



Signed

DEPUTY REGISTRAR

