



REPUBLIC OF KENYA



**KENYA LAW**  
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**Jiwani v Mohamed & 3 others (Civil Application E244 of 2024)  
[2024] KECA 984 (KLR) (26 July 2024) (Ruling)**

Neutral citation: [2024] KECA 984 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E244 OF 2024  
S OLE KANTAI, JA  
JULY 26, 2024**

**BETWEEN**

**ZAHERALI KARIM KURJI JIWANI ..... APPLICANT**

**AND**

**AMIRA SALIM MOHAMED ..... 1<sup>ST</sup> RESPONDENT**

**SAMILA SALIM MOHAMMED ..... 2<sup>ND</sup> RESPONDENT**

**THE REGISTRAR OF TITLES ..... 3<sup>RD</sup> RESPONDENT**

**ABDULKADIR ALI IBRAHIM ..... 4<sup>TH</sup> RESPONDENT**

*(An application for extension of time to file a Notice of Appeal out of time in an intended appeal from the Judgment of the Environment and Land Court of Kenya at Nairobi (A.A. Omollo, J.) delivered on 18th April, 2024 in E.L.C. Cause No. 500 of 2016)*

**RULING**

1. I am asked in the Motion brought under rule 4, the Court of Appeal Rules that I be pleased to grant the applicant Zaherali Karim Kurji Jiwani leave to appeal out of time against the judgment of Omollo, J. in ELC Case No. 500 of 2016 delivered on 18<sup>th</sup> April, 2024. In grounds in support of the Motion and in a supporting affidavit of Abdulshakoor Hasham, a lawyer, it is said inter alia that the suit was dismissed and judgment was to be published "... in due course"; that a copy of judgment was not availed on time until 6<sup>th</sup> May, 2024 when the applicant's lawyer discovered that judgment had been published on Kenya Law and posted on e-filing platform; that the applicant has been shut out from filing Notice of Appeal as required since judgment is indicated to have been delivered on 18<sup>th</sup> April, 2024 and 14 days for filing appeal had lapsed; that by the time instructions to appeal were received time had lapsed. It is said that the appeal has good chances of success and delay in filing Notice of appeal is not inexcusable or inordinate.



2. I have seen the judgment in the suit by Zaherali Karim Kurji alias Abdulla Karim Kurji Jiwani (1<sup>st</sup> plaintiff) and Zaherali Karim Kurji alias Abdulla Karim (suing as legal representative of the estate of the late Nunu Saud Salim alias Nunu Zaherali Kurji Jiwani (2<sup>nd</sup> plaintiff) where the suit was dismissed. It involved a dispute over ownership of a parcel of land L.R No. 1870/v/174 claimed by various relatives of the deceased.
3. There is a letter dated 23<sup>rd</sup> April, 2024 by Conrad Law Advocates LLP, for the applicant, to the ELC applying for proceedings and there is a Notice of Appeal dated 25<sup>th</sup> April, 2024 where it is intended to appeal against the whole decision.
4. I have not seen a replying affidavit by the respondents. I have seen hearing notice dated 2<sup>nd</sup> July, 2024 at 11.39 a.m. by our Registrar where service of the notice is effected on Ardhi Go Infoinfo@ardhi.go.ke; M. M. Muriuki m.muriuki.m@gmail.com. Parties were required to file written submissions within time limited. I have seen written submissions by the applicant but there are none for the respondents.
5. The applicant, in written submissions sets out principles to be considered in an application for leave to extend time. The applicant cites the case of *Fakir Mohamed vs. Joseph Mugambi & 2 Others* [2005] eKLR where this Court set down the parameters for the exercise of discretion as:
 

"The exercise of this Court's discretion under Rule 4 has been guided by a consideration of the length of the delay, the reason for the delay, the chances of the appeal succeeding if the application is granted, and the degree of prejudice to the respondent if the application is granted."
6. I have considered the Motion and the submissions made.
7. The principles that guide the court in considering an application of this nature are those set out in *Fakir Mohamed* (*supra*) cited by the applicant.
8. On length of delay I note that judgment intended to be appealed was delivered on 18<sup>th</sup> April, 2024. The part of the Motion which should have a date for the Motion is left out in the on-line version but I note that the affidavit in support of the Motion is dated 15<sup>th</sup> May, 2024, less than a month after the judgment. There is no inordinate delay.
9. The reason given why there was delay in filing Notice of Appeal was that judgment was delivered but a copy of the same was not availed to the applicant until time allowed for filing Notice of Appeal had lapsed. The lawyers had meanwhile filed a Notice of Appeal dated 25<sup>th</sup> April, 2024 as they awaited a copy of the judgment and as they awaited instructions from the applicant. This I find to be reasonable explanation.
10. On whether the intended appeal has chances of success I note that the dispute involved ownership of a parcel of land previously registered in the name of the deceased and her relatives were disputing who should be entitled to be registered as owner of the land. There are arguable points on appeal.
11. The respondents cannot be prejudiced by this Court pronouncing with finality who is entitled to own the land after the appeal is heard and determined.
12. I exercise my discretion in favour of the applicant. Let the applicant lodge Notice of Appeal within SEVEN (7) days of today. Costs of the Motion will be in the appeal.

**DATED AND DELIVERED AT NAIROBI THIS 26<sup>TH</sup> DAY OF JULY, 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.**

