



Bundi v Karani (Civil Application E335 of 2023) [2024] KECA 847 (KLR) (12 July 2024) (Ruling)

Neutral citation: [2024] KECA 847 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E335 OF 2023
DK MUSINGA, JA
JULY 12, 2024**

BETWEEN

JEREMY MIRITI BUNDI APPLICANT

AND

ROBERT THORONJO KARANI RESPONDENT

(An application for extension of time within which to file and serve the notice of appeal in an intended appeal against the whole judgment and decree of the High Court of Kenya at Nairobi (J. K. Sergon, J.) made on 19th June 2020 in H.C.C.C. No. 105 of 2011)

RULING

1. The applicant’s notice of motion dated 19th July 2023, seeks the following orders:
 - ii. That the Honourable Court be pleased to extend and enlarge the time within which the Applicant should serve the notice of appeal dated 29th June 2020 and filed on 1st July 2020, upon the plaintiff in the Superior Court.
 - iii. That the Honourable Court be pleased to order that he letter dated 18th July 2020 requesting for typed proceedings in the superior court as properly filed upon payment of the requisite (sic) applicable court fees.
 - iv. That the Honourable Court be pleased to extend and enlarge the time within which the Applicant should serve the letter dated 18th July requesting for typed proceedings upon the Plaintiff in the Superior Court.”
2. The applicant’s affidavit in support of the application states, inter alia, that the judgment in Milimani HCCC No. 105 of 2011, Robert Thoronjo Karani vs Jeremy Miriti Bundi, was delivered on 19th June 2020; that the applicant instructed his former advocate, Muthee George Muriithi t/a GM Law Advocates, to file an appeal; that the advocate drew a notice of appeal on 29th June 2020 and forwarded it by email on 1st July 2020 to the court for assessment of fees; that the applicant believed that his



- advocate had properly lodged the notice of appeal and he kept on checking with him from time to time about the progress of the intended appeal.
3. As the applicant was not getting appropriate feedback on the position of his appeal from his then advocate, he decided to consult his current advocates, MJD Associates, who wrote a letter to the Law Society of Kenya about the status of Mr. Muthee George Muriithi, and the Law Society of Kenya responded vide a letter dated 18th May 2023, stating that the said advocate was struck off the Roll of advocates with effect from 6th June 2022.
 4. The applicant then instructed MDJ Associates Advocates to act for him in this matter, and when they checked with the court, they realised that the notice of appeal had not been endorsed by the Deputy Registrar of the High Court; that there was no evidence of service of any notice of appeal upon the respondent; and that the applicant's former advocate had written to the Deputy Registrar of the High Court seeking typed proceedings.
 5. The applicant faults his former advocate for the delay in filing the notice and the record of appeal, and urges this Court to exercise its discretion in his favour. He contends that he has an arguable appeal with high chances of success, and will be highly prejudiced if this application is disallowed.
 6. In his replying affidavit, the respondent argues that the application is incompetent, frivolous, vexatious and an abuse of the Court process; that there has been inordinate delay in filing the application, three (3) years and one (1) month from the date of delivery of judgement; and that the application is only intended to derail execution of the judgment.
 7. The respondent further states that the applicant ought to have followed up on the progress of his intended appeal, but he did not do so; that he will be prejudiced if the application for extension of time is allowed; and that the applicant's recourse, if his allegations are true, is to sue his former advocate. For those reasons, he urged the Court to dismiss the application.
 8. I have considered the application and the parties' submissions that are on record. The principles that guide this Court in an application for extension of time are now well settled. The Court has to consider, inter alia, the length of the delay, the reasons for the delay, (possibly) the chances of success of the intended appeal, and the degree of prejudice that will be occasioned to the respondent if the application is granted. See *Leo Sila Mutiso v Hellen Wangari Mwangi* [1999] 2 EA 231.
 9. It is not dispute that the judgment sought to be appealed from was delivered on 19th June 2020, and the respondent was awarded a sum Kshs.2,500,000 against the applicant for defamation. It is also evident that the applicant instructed his former advocate, GM Law advocates, to institute an appeal, and on 29th June 2020 the said advocates prepared a notice of appeal and emailed it to the Court on the following day.
 10. The applicant believed that GM Law advocates were pursuing the appeal, until much later when he learnt that Mr. Muthee George Muriithi had been struck off the Roll of advocates since 6th of June 2022.
 11. Whereas the delay in filing this application is inordinate, I think the delay has been well explained. In *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* [2018] eKLR, this Court stated:

“The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained.”
 12. The applicant should not be punished for the mistake of his erstwhile advocate. The applicant did not know that his advocate had not acted on his instructions.



13. And whereas the respondent has the right to pursue execution of his judgment that was entered in his favour way back on 19th June 2020, if the application for extension of time is not granted, the applicant will have been denied the right to exercise his constitutional right of appeal because of his former advocate's mistake. I believe the respondent can be compensated by an award of costs, and in any event, if the intended appeal is not successful, the judgment sum shall be payable together with all the accrued interest.
14. Consequently, I allow this application and direct that the notice of appeal be filed within fourteen (14) from the date hereof, and the record of appeal be filed and served within thirty (30) days from the date of filing the notice of appeal. The applicant shall bear the costs of this application.

DATED AND DELIVERED AT NAIROBI THIS 12TH DAY OF JULY 2024.

D. K. MUSINGA (P)

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

