



REPUBLIC OF KENYA



**KENYA LAW**  
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**Rinka v Mwangi (Civil Application E056 of 2024)  
[2024] KECA 871 (KLR) (19 July 2024) (Ruling)**

Neutral citation: [2024] KECA 871 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CIVIL APPLICATION E056 OF 2024  
HM OKWENGU, JA  
JULY 19, 2024  
[IN CHAMBERS]**

**BETWEEN**

**JOSEPH MUIYA RINKA ..... APPLICANT**

**AND**

**ISAAC NGEETI MWANGI ..... RESPONDENT**

*(Being an Application for leave to file an appeal against the Ruling of the Environment and Land Court at Kilgoris, (Washe Mutwana, J.) dated 14th December, 2023 in ELC Case No. 40 of 2021)*

**RULING**

1. Joseph Muiya Rinka, the applicant, who was the appellant before the Environment & Land Court (ELC) at Kilgoris, has moved this Court by way of a Notice of Motion dated 27<sup>th</sup> April, 2024. The motion which is drawn by the applicant is said to be brought under the Constitution, the Appellate Jurisdiction Act, and the Court of Appeal, Rules, but is principally an application under rule 5(2)(b) of the Court of Appeal, Rules, for leave to file an appeal from the Ruling delivered by Hon. Justice Emmanuel Washe Mutwana, on the 14<sup>th</sup> December, 2023, in Kilgoris Environment and Land Court (ELC), Appeal Case No. 40 of 2021.
2. The application is anchored on grounds stated on the notice of motion as follows:
  - “ 1. That the ruling in ELC Appeal Case No. 40 of 2021, was delivered on the 14<sup>th</sup> December, 2023, in the presence of the advocate for the respondent and the applicant.
  2. That immediately after delivery of the ruling, the applicant filed a Notice of Appeal. However, due to financial constraints and illness, He was unable to file an appeal in time.



3. That the learned Judge based his pronouncements on numerous cases which were not part of the case before him.
4. That though the Hon. Judge directed the applicant to file a proper record of appeal, he did not consider the same, instead he based his pronouncements on procedural technicalities other than the merits of the application.
5. That notwithstanding the evidence on record, emotive and sensitivity of the matter, the Hon. Judge maintained that the application stands dismissed in its entirety.
6. That the applicant being dissatisfied with the ruling of the Superior Court wishes to challenge that ruling on an appeal and he has a genuine interest in pursuing the appeal.
7. That the applicant attributes the delay in filing an Appeal to financial difficulty and his health condition, and prays that such unavoidable circumstances should not prejudice his right to appeal.
8. That it is the applicant's assertion that the intended appeal raises substantial, triable and arguable issues that need to be heard and determined by this Honourable Court, for proper adjudication, fair and just determination of the subject matter.
9. That the applicant prays, that the application be allowed and leave granted for the filing of the appeal, within timelines as the court may set. and further supported by Affidavit of Joseph Muiya Rinka, annexed herewith, the nature of the case and other grounds and reasons to be adduced at the hearing hereof."

3. The applicant's motion is supported by an affidavit sworn by the applicant to which he has attached an incomplete Ruling of the ELC subject of the intended appeal, a notice of appeal and notice of motion. In response to the motion, the respondent has filed a replying affidavit in which he deposes that the applicant is not deserving of the exercise of the Court's discretion, because he is merely abusing the court process, having been granted an order of stay of execution on 8<sup>th</sup> November 2021, but has to date failed to file a proper appeal, thereby preventing the respondent from enjoying the fruits of the judgment he obtained on 29<sup>th</sup> May 2020.
4. I have considered the motion, and the contending affidavits. The ruling delivered on 14<sup>th</sup> December, 2023, was in respect of a Notice of Motion dated 2<sup>nd</sup> June, 2023, in which the applicant sought essentially leave to file an appeal against the judgment delivered on 29<sup>th</sup> May, 2020, in Kilgoris PMCC ELC Case No. 19 of 2019.
5. The applicant had filed a notice of appeal/memorandum of appeal on 12<sup>th</sup> June, 2020, and a record of appeal on 12<sup>th</sup> October, 2022, but the same was struck out on 27<sup>th</sup> April, 2023, and the Court granted the applicant leave to file and serve a new record of appeal within 14 (fourteen) days. Instead the applicant filed a new record of appeal on 29<sup>th</sup> June, 2023.
6. The applicant's main ground for not being able to comply with the directions of the Court issued on 27<sup>th</sup> April, 2023, is allegedly because the process of preparing a record of appeal is very complicated that even advocates do not know how to do it. Secondly, the applicant stated that he was not able to comply with the 14 days' period given to file the record of appeal, because he did not have funds to procure the services of an advocate to assist in the preparation of the record of appeal. The applicant



therefore sought to have time extended and the record of appeal filed on 29<sup>th</sup> June, 2023, deemed as properly filed.

7. In the ruling delivered on 14<sup>th</sup> December, 2023, the learned Judge in declining to grant the application, found that the record of appeal filed on 12<sup>th</sup> October, 2022, was struck out for failing to comply with the law, and the Judgment pronounced on 29<sup>th</sup> May, 2020, remains on record. The Court found the applicant's explanation for failing to file the record of appeal within the 14 days that were given, not satisfactory, and declined to extend further time.
8. On the request for consolidation, the learned Judge found that there was no issue for determination in Kilgoris PMCC ELC Case No. 15 of 2020, as the proceedings before the Court were an appeal from Kilgoris PMCC Case No. 19 of 2018 which was determined in the judgment pronounced on 29<sup>th</sup> May, 2020, and an attempt to have that judgment set aside had not been successful. It was for these reasons that the applicant's motion was dismissed. Once again the applicant filed a notice of appeal dated 4<sup>th</sup> March 2024 on 12<sup>th</sup> March 2024 expressing his intention to appeal the Ruling delivered on 14<sup>th</sup> December 2023. He attributed the delay in filing the notice of appeal that ought to have been filed within 14 days from the date of the judgment, to illness and financial difficulty. However, nothing is attached to confirm the alleged illness, nor has he demonstrated his alleged impecunity.
9. Given the above history of the way the applicant has conducted his litigation, and the fact that he did not file an appropriate record of appeal against the ruling of 27<sup>th</sup> April, 2023, even after time being extended, and the fact that the applicant has not established a plausible reason for the delay in filing the notice of appeal and the record of appeal in regard to the ruling delivered on 14<sup>th</sup> December, 2023, it is evident that the applicant is not serious about pursuing his right of appeal, and there is no reason why this Court should exercise its discretion in his favour. As stated by the Supreme Court in *Nicholas Kiptoo arap Korir Salat v. IEBC* (2014) eKLR, extension of time is not a right of a party, but an equitable remedy that is only available to a deserving party at the discretion of the Court. The applicant is not deserving of the exercise of this equitable remedy.

Consequently, the application dated 27<sup>th</sup> April 2024 is dismissed with costs

**DATED AND DELIVERED AT KISUMU THIS 19<sup>TH</sup> DAY OF JULY, 2024**

**HANNAH OKWENGU**

**JUDGE OF APPEAL**

I certify that this is a true copy of the original

signed

**DEPUTY REGISTRAR**

