



REPUBLIC OF KENYA



KENYA LAW
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**Olweny v Arekai (Civil Appeal (Application) E013 of 2024)
[2024] KECA 801 (KLR) (12 July 2024) (Ruling)**

Neutral citation: [2024] KECA 801 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPEAL (APPLICATION) E013 OF 2024
SG KAIRU, JA
JULY 12, 2024**

BETWEEN

NORAH O. OLWENY APPLICANT

AND

SAMMY KEMOO AREKAI RESPONDENT

((An application for stay of execution and enlargement of time pending lodging, hearing and determination of an appeal from the judgment of the Environment and Land Court at Nakuru (Ombwayo, J.) delivered on 7th December 2023))

RULING

1. In prayer 3 of her application dated 6th February 2024 the applicant Norah O. Olweny seeks an order for enlargement of time to file the appeal and thereafter mark the notice of appeal dated 3rd January 2024 as duly filed. In prayer 2 of the same application, the applicant seeks an order of stay of execution of the judgment of the Environment and Land Court delivered on 7th December 2023. As a single judge, I cannot consider the later prayer.
2. Nothing in the grounds on the face of the application in support of the application and nothing in the supporting affidavit of Norah Atieno Olweny, the applicant, speak to the matter of extension of time. Beyond deposing that the judgment of the ELC was delivered on 7th December 2023 and that copies of the proceedings and judgment were applied for in a letter to the ELC on 5th February 2024 and that a notice of appeal dated 3rd January 2024 was lodged on 8th January 2024, no reasons or explanation is offered for the delay involved.
3. During the hearing of the application before me on 13th June 2024, learned counsel Mr. E. Ambala held brief for Mr. Odhiambo and relied entirely on written submissions dated 6th March 2024. To the extent that those submissions relate to the prayer for extension of time, reference is made to the Supreme Court of Kenya stated in *Nicholas Kiptoo Arap Korir Salat v. IEBC & 7 others*, Supreme



Court Application No. 16 of 2014[2014] eKLR and that “the court be pleased to enlarge time to file the appeal and mark the notice of appeal dated 3rd January 2024 as duly filed.”

4. Learned counsel Miss. Kimure for the respondent relied on the replying affidavit sworn by Sammy Kemoo Arekai as well as the respondent’s written submissions. In that affidavit, the respondent deponed that the application is an afterthought and a means to delay justice and a ploy to deny him the fruits of the judgment of the ELC; that no plausible reason why there was delay in filing the notice of appeal are given. It is submitted for the respondent that “no explanation has been given as to why the appeal was

“ not timely filed which again buttresses our submission that this is an afterthought designed to derail the respondents enjoyment of his fruit of judgment.”

5. I have considered the application to the extent of the prayer for extension of time. In *Nicholas Kiptoo Arap Korir Salat v. IEBC & 7 others*, to which counsel for the applicant referred, the Supreme Court of Kenya was categorical that extension of time is not a right of a party but an equitable remedy available to a deserving party at the discretion of the court; that the party seeking extension of time has the burden to lay a basis to the satisfaction of the court; and that extension of time is a consideration on a case to case basis; that delay should be explained to the satisfaction of the court. Other relevant considerations include whether there will be prejudice suffered by the respondent if the extension is granted; and whether the application is brought without undue delay. Public interest is also consideration.
6. With those principles in mind, it is incumbent upon a party invoking Rule 4 of the *Court of Appeal Rules* to place material before the Court based on which to exercise the Court’s discretion. In this case, there is absolutely nothing placed before the Court. The applicant seems to proceed on the basis that extension of time is her right without making any effort to satisfy the Court why it should exercise its discretion in her favour. There is no material to aid me. No explanation at all for the delay, however short it might be.

Consequently, I decline the prayer for extension of time. The same is dismissed with costs to the respondent.

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

S. GATEMBU KAIRU, FCIArb

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

