



**Gichacha & another v Siringi & 4 others (Civil Appeal (Application)
E158 of 2023) [2024] KECA 778 (KLR) (5 July 2024) (Ruling)**

Neutral citation: [2024] KECA 778 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) E158 OF 2023**

DK MUSINGA, JA

JULY 5, 2024

BETWEEN

TAMMOIMA JMB GICHACHA 1ST APPLICANT

GIDEON CAIRO MITONDA 2ND APPLICANT

AND

ELIZABETH MAKORI SIRINGI 1ST RESPONDENT

NORAH MONG'ARE MAKORI 2ND RESPONDENT

KAJIADO NORTH LAND REGISTRAR - NGONG 3RD RESPONDENT

THE ATTORNEY GENERAL 4TH RESPONDENT

KENYA COMMERCIAL BANK 5TH RESPONDENT

(An Application for extension of time to lodge and file a notice of appeal out of time from the judgment and decree of the Environment and Land Court at Nairobi (S. Okongo, J.) delivered on 9th February 2023 in ELC No. 691 of 2016)

RULING

1. The applicants' motion dated 24th April 2023 seek leave to lodge an appeal from the judgment of the Environment and Land Court (ELC), delivered on 9th February 2023 in Nairobi ELC No. 691 of 2016. The subject matter of the dispute in the said suit is a parcel of land known as Ngong/Ngong/26365, which is occupied by the applicants, having purchased it from the 2nd respondent.
2. The applicants state that the impugned judgment was delivered by Okang'o, J, from Kisumu where he had been transferred to, but they did not get a copy of the same until 15th March 2023 because the file had not been transmitted to Nairobi. The applicants therefore could not have filed a notice of appeal within fourteen days from the date of delivery of the judgment.



3. The applicants believe that their intended appeal has good chances of success, and have annexed to their affidavit in support of their application and a draft memorandum of appeal.
4. The application is not opposed as none of the respondents has filed any replying affidavit or submissions.
5. The principles that guide this Court in an application of this nature are well settled. The Court has to consider, inter alia, the period of delay; the reasons for the delay; the chances of success of the intended appeal; and the degree of prejudice to the respondent if the application is allowed. See *Leo Sila Mutiso v Hellen Wangari Mwangi*[1999] 2 EA 231
6. In my view, the delay, which is not inordinate, has been well explained. From the draft memorandum of appeal, the intended appeal is not frivolous. The respondents will not suffer great prejudice if this application is granted. The applicants are in occupation of the disputed property and wish to exercise their constitutional right of appeal.
7. Consequently, I allow the application and further direct that the notice of appeal be filed and served within fourteen (14) days from the date of delivery of this ruling, and the record of appeal be filed and served within thirty (30) days from the date of filing the notice of appeal. I make no order as to costs of the application.

DATED AND DELIVERED AT NAIROBI THIS 5TH 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

