



Chairlacy - Nyakiambi Women Group v Waweru & 2 others (Sued as Administrators of the Estate of John Gichuhi Mutego (Deceased)) (Civil Appeal (Application) E182 of 2023) [2024] KECA 1524 (KLR) (25 October 2024) (Ruling)

Neutral citation: [2024] KECA 1524 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPEAL (APPLICATION) E182 OF 2023
FA OCHIENG, JA
OCTOBER 25, 2024**

BETWEEN

THE CHAIRLACY - NYAKIAMBI WOMEN GROUP APPLICANT

AND

**LEONARD WAWERU 1ST RESPONDENT
GICHUHI MARY WANJIKU 2ND RESPONDENT
GICHUHI ESTHER WANGARI THUITA 3RD RESPONDENT
SUED AS ADMINISTRATORS OF THE ESTATE OF JOHN GICHUHI MUTEGO
(DECEASED)**

(An application for extension of time to file a notice of appeal out of time from the Ruling and Orders of the High Court of Kenya at Nakuru (M. T. Matheka, J.) dated 31st May 2021 and delivered on 24th June 2021 in HC Civil Suit No. 113 of 1997 (OS))

RULING

1. The application before me is dated 29th January 2024. It is an application seeking the following reliefs;
 - “ 1. That this Honourable Court be pleased to extend time for the lodging of the notice of appeal against the Ruling and Order of the Honourable learned Judge Mumbua T. Matheka dated 31st May 2021 and delivered to parties by email on 25th June 2021.
 2. That the Notice of Appeal dated 22nd July 2021 and filed on 23rd July 2021 and the Record of Appeal filed on 14th December 2023 be deemed to have been filed within time and properly on record.



3. That the costs of the application to abide the outcome of the appeal.”
2. The application was supported by an affidavit sworn by Mary Wanjiku Mangara, who described herself as the chairlady of Nyakiambi Women Group.
3. She explained that the impugned ruling was originally scheduled to be delivered on 22nd April 2021; however, it was not delivered on the said date.
4. The deponent stated that her advocates wrote to the Deputy Registrar on 25th June 2021, inquiring about the pending ruling.
5. On the same date, the Deputy Registrar responded by forwarding a copy of the ruling, to the applicant’s advocates. The Deputy Registrar copied his response to the respondent’s advocates, who duly acknowledged receipt of a copy of the ruling.
6. It was the applicant’s case that;

“... the court proceedings indicate that no Ruling was delivered on 31st May 2021”, even though the said ruling was dated 31st May 2021.
7. It is the applicant’s understanding that the ruling was delivered on 25th June 2021;

“... which was acknowledged by the respondents.”
8. Therefore, when the applicant filed a Notice of Appeal on 22nd July 2021, it believes that the said notice was filed within time.
9. The applicant further drew attention of this Court to the fact that on the face of the impugned ruling, the learned Judge had granted 30 days to the applicant, to lodge an appeal.
10. Accordingly, the applicant held the firm view that its notice of appeal was filed within time.
11. The applicant emphasized that the discrepancy in the date on the Ruling, and the “... actual date when the Ruling was delivered to the parties via email is a mistake of the court that should not be visited on either party”.
12. In the circumstances, the applicant only filed this application out of an abundance of caution, as the respondent had filed an application to strike out the notice of appeal, on the grounds that it had been filed late.
13. The foregoing was restated in the applicant’s written submissions.
14. In answer to the application, the respondent filed a replying affidavit which was sworn by Paul Murimi Kiongo, the learned advocate representing the respondent in this case. The respondent stated that the impugned ruling was delivered on 31st May 2021.
415. Pursuant to Rule 75 of the Court of Appeal Rules, the applicant ought to have lodged its notice of appeal within 14 days from the 31st May 2021. In effect, by the respondent’s calculations, the applicant had until 14th June 2021 to lodge its notice of appeal.
16. The respondent asserted that the notice of appeal was not only filed late but was also served well outside the mandatory 7 days, from the date when it was filed.
17. The respondents indicated that the notice of appeal was only served upon them on 20th August 2021.



18. The respondents filed an application (being Civil Application No. 109 of 2023), dated 15th November 2021, seeking orders to strike out the notice of appeal.
19. Although the respondents said the application was fixed for hearing on 21st February 2024, the matter did not proceed, as it was taken out of the hearing list.
20. Given those circumstances, the respondents expressed the view that the current application was simply intended to circumvent the respondents' pending application (No. 109 of 2023).
21. I have given due consideration to the application, the written submissions together with the oral highlights that were put forward by Mr. Kimani and Mr. Guyo, advocates for the applicant and the respondents, respectively.
22. The issue which falls for determination is whether or not the applicant had made out a case to warrant the grant of this Court's discretion, to extend time for the filing of the notice of appeal.
23. The applicant pointed out that the ruling was delivered at a time when the COVID pandemic had ravaged most parts of the world, culminating in the decision by the Kenya Judiciary to conduct virtual proceedings.
24. I am faced with the question as to whether the impugned ruling was delivered on 14th June 2021, but backdated to 31st May 2021, as asserted by the applicant.
25. It would be a monumental error for the court to backdate a ruling in the manner suggested by the applicant. Therefore, the applicant ought to have led evidence of such deliberate manipulation of the court records. But, the applicant did not present evidence to support its theory of the alleged manipulation.
26. On the other hand, the respondents insist that the ruling was delivered on 31st May 2021. In light of the fact that the ruling was to have been delivered by email, nothing would have been easier than to make available a copy of the email from the Deputy Registrar, forwarding the ruling to the parties, on 31st May 2021.
27. In the absence of proof that the ruling was dispatched to the parties on 31st May 2021, I am inclined to find, as I hereby do, that the ruling was not dispatched on that date.
28. The only evidence available shows that the impugned ruling was dispatched to the parties on 28th June 2021.
29. Pursuant to rule 77(2) of the Court of Appeal Rules, the notice of appeal ought to have been filed within 14 days from the date of the decision. Therefore, the 14 days began running from 25th June 2021 and ended on 8th of July 2021.
30. The applicant did not file the notice of appeal within 14 days, as stipulated by the rules.
31. Nonetheless, the applicant held the opinion that the notice of appeal which was filed on 23rd July 2021, should be deemed to have been filed within time.
32. In the same breadth, the applicant said;

“It is not disputed that under the Court of Appeal Rules 2010, as in force then, the Notice of Appeal should have been lodged within 14 days of the date of the decision against which it is desired to appeal.”



33. How then does the applicant purport to have filed the notice of appeal timeously, considering that 23rd July 2021 did not fall within the 14 days' period as stipulated by the rules?
34. The answer from the applicant was that the learned Judge had, within the impugned ruling, granted;
“Right of appeal 30 days.”
35. Although that statement was made by the learned Judge, I find that the court appealed from, could not extend the time for lodging the notice of appeal.
36. By conduct, the applicant is deemed to appreciate that it is this Court that has the requisite jurisdiction to extend the time for lodging a notice of appeal arising from a court subordinate to it. If the applicant was convinced that time had already been extended by virtue of what was stated in the impugned ruling, it would not have lodged the current application before this Court. But whether or not the applicant believed that the High Court had jurisdiction to extend time for lodging a notice of appeal, would not alter the fact that the said court lacked the requisite jurisdiction.
37. The all-important question is whether or not this Court ought to extend time, in the current circumstances.
38. First, it is clear that the application was lodged more than two- and-a-half years after the impugned ruling was delivered. By itself, that is a long period of time falling within the purview of inordinate delay.
39. Unless the applicant provided a plausible explanation for the said delay, this Court would decline to exercise its discretion in its favour.
40. In the case of *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* [2018] eKLR, this Court stated that:
“The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court's flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”
41. The explanation tendered was that the applicant was under the impression that the time had already been extended by the High Court. Therefore, it was not until the applicant was faced with the application to strike out the notice of appeal, that it dawned upon the said applicant that there was a need to seek appropriate orders from this Court. It is then that the applicant moved this Court;
“... out of an abundance of caution ...”
42. In the case of *Leo Sila Mutiso v Hellen Wangari Mwangi* [1999] 2 EA 231, the court held that:
“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this Court takes into account in deciding whether to grant an extension of time are: first the length of the delay, secondly, the reason for the delay; thirdly (possibly) the chances of the appeal succeeding if the application is granted; and, fourthly, the degree of prejudice to the respondent if the application is granted.”



- 43. I hold the considered view that the explanation by the applicant is plausible. Therefore, I hereby exercise my unfettered discretion in favour of the applicant, and do extend the time for the filing of the notice of appeal, so that the notice on record is deemed to have been filed within time as hereby extended.
- 44. On the question of costs, I order that each party will meet their respective costs. I so order because there is no basis upon which the respondents could be held accountable for an error which had been committed by the applicant. The application was brought so as to correct the mistake of the applicant.

DATED AND DELIVERED AT NAIROBI THIS 25TH DAY OF OCTOBER, 2024.

F. OCHIENG

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

