



REPUBLIC OF KENYA



KENYA LAW
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**Kanampiu v M’rithaa (Civil Appeal E061 of 2024)
[2024] KECA 1354 (KLR) (4 October 2024) (Ruling)**

Neutral citation: [2024] KECA 1354 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPEAL E061 OF 2024
JW LESSIT, JA
OCTOBER 4, 2024**

BETWEEN

DR. M’RITHAA NJERU KANAMPIU APPLICANT

AND

GRACE KANGAI M’RITHAA RESPONDENT

(An application to extend time for the filing of the Appeal against the Judgment delivered 13th June 2019 in Meru High Court Originating summons No. 1 of 2018.)

RULING

1. Dr. M’rithaa Njeru Kanampiu, the applicant herein has by a Notice of Motion dated 5th July 2024, brought under Article 159(2) of the Constitution, section 3, 3A and 3B of the Appellate Jurisdiction Act, and rule 4 of the Court of Appeal Rules, 2022 seeking extension of time to file an appeal delivered on 13th June 2019. The grounds for the application are inter alia, that the applicant has already filed a notice of appeal dated 25th June 2019.
2. The application is opposed. Grace Kangai M’rithaa the respondent has sworn an affidavit dated 10th September 2024 challenging the delay in bringing the application inordinately late.
3. The factors to consider in an application for extension of time like this one have been discussed by various Judges of this Court. Waki, JA. as was confirmed by the full court in the case of *Fakir Mohamed v Joseph Mugambi & 2 Others* in Civil Application No. 33 of 2004 analyzed factors to be the following:

“ The exercise of this court’s discretion under Rule 4 has followed a well beaten path since the stricture ‘sufficient reason’ was removed by amendment in 1985. As it is unfettered, there is no limit to the number of factors the court would consider so long as they are relevant. The period of delay, the reason for the delay, (possibly) the chances of the appeal succeeding if application is granted, the degree of prejudice to the respondent if the application is granted,



the effect of the delay on public administration, the importance of compliance with time limits, the resources of the parties, whether the matter raises issues of public importance – are all relevant but not exhaustive factors: See *Mutiso v Mwangi* Civil Application No. Nai. 255 of 1997 (ur), *Mwangi v Kenya Airways Limited* [2003] KLR 486, *Major Joseph Mwereri Igweta v Mulika M’Ethare and Attorney General*, Civil Application No. Nai 8/2000 (ur) and *Murai v Wainana* (No. 4) [1982] KLR 38.”

4. And in *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* [1999] 2 EA 231, the Court expressed itself thus:-

“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.”

5. It is clear that the key factors to be considered in an application for extension of time are four: the period of delay, the reason for the delay, the chances of the appeal succeeding if application is granted and the degree of prejudice to the respondent if the application is granted.
6. The period of the delay is clear. While the applicant filed his notice of appeal timeously on 25th June 2019 after the judgment was delivered on the 13th June 2019, this application for extension of time is dated 5th July 2024, filed by Messrs G.M. Wanjohi & Mutuma Advocates. That is five days since the judgment was delivered, and since the notice of appeal was filed.
7. The applicant has to explain the reason for the delay. I have considered the reasons given for the delay on the face of the application. The applicant blames his previous advocate of failing to pursue proceedings of the superior court, and of failing to file any record or memorandum of appeal. It is stated that the applicant filed an application for review of the judgment dated 10th September 2021, and a ruling delivered on 10th January 2024 allowing the execution of the impugned judgment.
8. I note that the applicant did not file any affidavit to back the grounds cited on the motion. Further, there are no for instance, the application dated 10th September 2021 should have been annexed, as well as the ruling of the court delivered on the 10th January 2021. As it is, the reasons advanced to explain the delay has not been substantiate. Even supposing that the applicant filed an application for review in 2021 September, the period of over two years between the time the notice of appeal was filed and the application for review was filed ought to have been explained.
9. The applicant should also establish that there are chances of the appeal succeeding if the application is granted. There was no attempt made to establish this. Apart from lack of a supporting affidavit, the applicant did not annex a memorandum of appeal. There is nothing upon which the success of the appeal, if the application were to be allowed, can be deciphered.
10. The fourth factor the Court should consider is the degree of prejudice the respondent stands to suffer if the application is granted. The respondent, in her replying affidavit has decried the delay in bringing the appeal. She deposes that the applicant was granted a temporary stay of execution to enable him file his appeal to this Court, but that he slept on the stay for three years taking no action to file the same. She urges that the delay of five years was unexplained, inordinate and therefore the applicant is guilty of laches and deserves no equity.



11. I am mindful of the fact that the discretion under rule 4 is unfettered, but it has to be exercised judicially, not on whim, sympathy or caprice. I take note that in exercising my discretion I ought to be guided by consideration of the factors as stated herein above. I find that the delay in bringing this application has been inordinate, being five years. I find that the applicant made no attempt to explain the delay at all, neither did he demonstrate that his appeal, if the application is allowed is likely to succeed. As for the respondent, I find that she stands to suffer great prejudice if the applicant is given extension of time to bring the appeal as sought. He is guilty of laches, he has not demonstrated any exercise of diligence in making steps towards filing the appeal, and I am not persuaded that given the delay, he has any intention to pursue an appeal from the impugned appeal.
12. I have come to the conclusion that the application lacks in merit, that the applicant is undeserving of the exercise of discretion in his favour, and that the application is for dismissal, which I hereby do with costs to the respondent.

DATED AND DELIVERED AT NYERI THIS 4TH DAY OF OCTOBER, 2024.

J. LESIIT

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

