



**Gakumo & another v Kamau (Being Sued as the Legal Representative of the Estate of Kariuki Kamau - Deceased) (Civil Appeal (Application) E062 of 2024) [2024] KECA 1362 (KLR) (3 October 2024) (Ruling)**

Neutral citation: [2024] KECA 1362 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPEAL (APPLICATION) E062 OF 2024  
JW LESSIT, JA  
OCTOBER 3, 2024**

**BETWEEN**

**FRANCISCA NJERI GAKUMO ..... 1<sup>ST</sup> APPLICANT**

**VERONICA WANJIKU KUNGU ALIAS WANJIKU GAKUMO . 2<sup>ND</sup> APPLICANT**

**AND**

**CHARITY WAMBUI KAMAU ..... RESPONDENT**

**BEING SUED AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF  
KARIUKI KAMAU - DECEASED**

*(An application for extension of time for filing the appeal against the Judgment of the Environment and Land Court at Muranga (L. Gacheru, J.) delivered on 11th April 2024 in E.L.C Case No. E025 of 2021 (O.S) Consolidated with Chief Magistrate Case No. E053 of 2021)*

**RULING**

1. Francisca Njeri Gakumo and Veronica Wanjiku Kungu alias Wanjiku Gakumo, the applicants herein, vide an application dated 15<sup>th</sup> July 2024, brought pursuant to rule 4 of the Court of Appeal Rules (Rules) seeks the following orders:
  - a. An order extending time for filing the appeal against the judgment in Murang'a Environment and Land Court Case No. E025 of 2021 (O.S), consolidated with Murang'a Chief Magistrate Case No. E053 of 2021.
  - b. An order granting leave to file the appeal out of time.
  - c. That upon granting prayer (a) and (b) above, provide timelines for filing the notice of appeal and the record of appeal.



- d. That cost of and incidental to this application be borne to the respondents.
2. The application is supported by grounds on the face of the Motion and in the affidavit dated 15<sup>th</sup> July 2024 and further affidavit dated 5<sup>th</sup> September 2024 in support thereof. It is opposed vide a replying affidavit dated 16<sup>th</sup> August 2024. I have considered the application, the two affidavits in support and the replying affidavit in opposition to the application. I have also considered the submissions filed by the applicants advocate dated 5<sup>th</sup> September 2024.
  3. The Court of Appeal has, in many pronouncements set down the factors that should guide the Court in an application of this nature. In the authority of *Imperial Bank Ltd (in receivership) & Another vs. Alnasir Popat & 18 Others* [2018] eKLR, this Court stated that:

“Some of the considerations to be borne in mind while considering an application for extension of time include the length of the delay involved, the reason(s) for the delay, the possible prejudice, if any, that each party stands to suffer depending on how the court exercises its discretion; the conduct of the parties; the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal;

the need to protect a party’s opportunity to fully agitate its dispute, against the need to ensure timely resolution of disputes; the public interest issues implicated in the appeal or intended appeal; and whether, prima facie, the intended appeal has chances of success or is a mere frivolity. In taking into account the last consideration, it must be born in mind that it is not really the role of the single judge to determine definitively the merits of the intended appeal. That is for the full court if and when it is ultimately presented with the appeal.”

4. Clearly, the factors to be considered are inexhaustible, and vary depending with the circumstances of each case. There are however the key factors that must be considered; the length of the delay involved, the reason(s) for the delay; the possible prejudice, if any, that each party stands to suffer; the conduct of the parties; and the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal.
5. The delay involved in this case is three months. Regarding the delay and the reasons advanced for the same, the applicants averred that the judgment of the superior court was to be delivered on notice, however it was delivered on the 11<sup>th</sup> April 2024 without notice and in the absence of the parties. That the applicants got a copy of the judgement after the time to file notice of appeal had lapsed.
6. The respondent contests the applicants allegations and annexed a copy of an email sent to the applicants and respondent’s advocates on 4<sup>th</sup> April 2024 informing them of the delivery of the judgment on the 11<sup>th</sup> April 2024; and a follow-up email dated 12<sup>th</sup> April 2024 informing them of the delivery of the judgment. The respondent further contends that even though the applicants allege that they received the judgment in mid-June, the application was not brought until mid-July, and that the delay is inordinate and unexplained. It is also contended that the applicants have not demonstrated that they have an arguable appeal.
7. In response to the respondent, the applicants advocate on record, Charles Mbugua W. swore a further affidavit. Counsel deposes that the email sent to his official email address went to spam but he did not realize it until later. He deposes that although it was reflected in the system that the judgment was uploaded into the system the same day it was delivered, the same could not be downloaded, and that was the reason he wrote to the court on 16<sup>th</sup> April 2024. He urges the Court to take judicial notice



that this was around the time the judiciary was going paperless and there were many challenges in the system.

8. Counsel for the applicants relies on the case of Paul Wanjohi Mathenge vs. Duncan Gichane Mathenge [2013] eKLR and the Supreme Court of Nicholas Kiptoo Arao Korir Salat vs. independent Electoral and Boundaries Commission & 7 Others [2014] eKLR on the factors to be considered as already alluded in this ruling and further for the proposition that the Court's discretion is unfettered.
9. The three months delay has been explained by the applicants. The reason given is reasonable. Challenges in the Court e-filing system, especially at the time of changeover to paperless brought with it great challenges, the slow response to requests by litigants especially due to the sudden increase in the volume of filing and downloading of material were very common at the time in question. I do take judicial notice of the challenges and difficulties experienced by litigants. I am satisfied that the applicants have given a reasonable and acceptable explanation for the delay.
10. As to the possible prejudice, if any, that each party stands to suffer; the conduct of the parties; and the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal. The applicants have a right to appeal. They have exercised that right by filing this application. There is nothing unbecoming of the conduct of the applicants or their counsel, having explained why they were absent when the judgment was read, which apparently the respondent's counsel also skipped. I find that the applicants stand to suffer the greater prejudice in the circumstances, if their application is declined. The respondent on the other hand has not shown any prejudice she stands to suffer if the application is granted.
11. I am satisfied that the applicants are deserving of the exercise of discretion in their favour. Accordingly I order as follows:
  - a. The application dated 15<sup>th</sup> July 2024 is hereby allowed.
  - b. An order be and is hereby issued extending time for filing the appeal against the judgment dated 11<sup>th</sup> April 2024, in Murang'a Environment and Land Court Case No. E025 of 2021 (O.S), as Consolidated with Murang'a Chief Magistrate Case No. E053 of 2021.
  - c. An order be and is hereby issued granting leave to the applicants to file the appeal out of time.
  - d. The applicants do file the notice of appeal and the record of appeal within 21 days of the date hereof and serve the same within 7 days from the date of filing.
  - e. That cost of the application be borne to the respondents.

**DATED AND DELIVERED AT NYERI THIS 3<sup>RD</sup> 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**

