



**Mboroki v Naitore & another (Civil Application E066 of 2024)  
[2024] KECA 1347 (KLR) (3 October 2024) (Ruling)**

Neutral citation: [2024] KECA 1347 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPLICATION E066 OF 2024  
S OLE KANTAI, JA  
OCTOBER 3, 2024**

**BETWEEN**

**NELSON MURITHI MBOROKI ..... APPLICANT**

**AND**

**MONICAH NAITORE ..... 1<sup>ST</sup> RESPONDENT**

**MERU COUNTY GOVERNMENT ..... 2<sup>ND</sup> RESPONDENT**

*(An application for extension of time to file and serve record of appeal from the Judgment of the Environment and Land Court at Meru (C.K.Yano, J.) dated 28th September, 2022 in E.L.C. Appeal No. E086 of 2021)*

**RULING**

1. The applicant Nelson Mboroki applies under rule 4 of The Court of Appeal Rules that I be pleased to extend the time for him to file a record of appeal out of time. He states in the Motion that the reason for his failing to file an appeal on time was that his former lawyers failed to file a record of appeal on time despite having lodged notice of appeal and he adds in the supporting affidavit that he had all along believed that his lawyers had filed an appeal but realised too late that they had not done so; that delay in filing an appeal is not deliberate but was due to the mistake of those advocates who did not file an appeal as per his instructions. He has annexed a draft Memorandum of Appeal where seven grounds of appeal are set out where it is proposed to be argued on appeal that the Judge of the Environment and Land Court ('ELC') erred in law and fact in holding that the case before that court was res judicata; that the Judge erred in law and fact in failing to appreciate that he (the applicant) was in occupation of the land, amongst other grounds.
2. I have seen a hearing notice dated 2<sup>nd</sup> September, 2024 informing respective advocates of the parties of the hearing date and requiring them to file written submissions within given time. I have seen written submissions by the applicant but none from the respondents. There is also an affidavit of service by



Charles Omari Nyambati, a lawyer, who depones that he served the application on M/s Mutembei & Kimathi Advocates on 12<sup>th</sup> August, 2024.

3. The principles that apply in an application for leave to extend time were well set out in the oft-cited case of Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi [1999] 2 EA 231 as follows:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well stated 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.”

4. I note that judgment intended to be appealed was delivered by ELC on 28<sup>th</sup> September, 2022. A notice of appeal dated 3<sup>rd</sup> October, 2022 was lodged with Deputy Registrar, High Court of Kenya, Meru, on 6<sup>th</sup> October, 2022. The applicant says that he then believed that his lawyers would file a record of appeal within time as required but that they did not do so. He always intended to appeal but that he was failed by his lawyers. I accept that explanation and note, in any event, that the respondents who were served with the application have not responded to the same. The application is dated 18<sup>th</sup> July, 2024 and I think that there is no inordinate delay in bringing the application. The grounds of appeal listed are not idle grounds, they are worth of consideration in this Court.
5. I allow the Motion. Let the applicant lodge record of appeal within fourteen (14) days of today. Costs of the Motion will abide the appeal.

**DATED AND DELIVERED AT NYERI THIS 3RD DAY OF OCTOBER, 2024.**

**S. ole KANTAI**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

