



**Ngari & 2 others v David (Civil Application E074 of 2024)
[2024] KECA 1349 (KLR) (3 October 2024) (Ruling)**

Neutral citation: [2024] KECA 1349 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E074 OF 2024
S OLE KANTAI, JA
OCTOBER 3, 2024**

BETWEEN

BENARD IRERI NGARI 1ST APPLICANT

**LYDIA NDEGI IRERI (SUING AS THE LEGAL REPRESENTATIVES OF THE
ESTATE OF AMOS NGAI IRERI - DECEASED) 2ND APPLICANT**

IVY WANJA 3RD APPLICANT

AND

BENJAMIN MWANIKI DAVID RESPONDENT

(An application for extension of time to lodge Notice of Appeal from the Judgment of the High Court at Embu (Njuguna, J.) dated 24th July, 2024 in HCCA No. 21 of 2024 Consolidated with HCCA No. 22 of 2024 and HCCA No.24 of 2024)

RULING

1. In a judgment delivered by Njuguna, J. at the High Court of Kenya at Embu on 24th July, 2024 the consolidated appeals partially succeeded in that liability was apportioned between the parties and damages awarded accordingly resulting from a road traffic accident where one person was fatally injured and another suffered bodily injuries.
2. The applicants Bernard Ileri Ngari and Lydia Ndegi Ileri (suing as the legal representatives of Amos Ngai Ileri – deceased) in the Motion brought under sections 3A and 3B of the Appellate Jurisdiction Act and rule 4 of the Court of Appeal Rules, 2010 pray in the main that I be pleased to extend time within which to lodge notice of appeal arising from the said judgment in HCCA 21 of 2024 consolidated with HCCA 22 of 2024 and HCCA 24 of 2024. In grounds in support of the Motion and in a supporting affidavit of Donald Z. Ogwen, a lawyer with the law firm of Khan & Associates, Advocates on record for the applicants, it is said that the applicants intend to appeal against the said judgment; that the applicants became aware of the judgment on the 14th day after it had been



delivered; that they want to appeal and delay is not inordinate; that no prejudice will be suffered by the respondent. It is further stated by the said lawyer that he has applied for and paid for typed proceedings of the High Court. He depones at paragraphs 6-8 (inclusive) of the affidavit:

- “6. That though I was present before the superior court on the 24th July 2024, doing other matters, the decision was delivered in my absence, and the court respectfully advised me to check for the uploaded decision and it was not until the 6th August 2024 that I managed to get a copy of the same.
7. That the delay is (sic) filing the Notice of Appeal could be for a period of one if not two days or not at all, however, the applicants have instructed me not to take any chances and prepare the present motion.
8. That I know that the respondent will not be prejudiced by this motion as indeed the decision/finding is a monetary decision and be (sic) same ought to be paid by the respondent to the applicants herein.”

3. I note a hearing notice showing that parties’ advocates were served on 2nd September, 2024 at 11.17 a.m. where they were advised of the hearing date and required to file written submissions within limited time. I have noted Affidavit of Service by the said lawyer indicating that he served the application upon M/s Kimondo Gachoka & Co., Advocates on 20th August, 2024.
4. I have seen and considered written submissions by the applicants but I have not seen any from the respondent or a replying affidavit to the application.
5. The principles which apply in an application of this nature 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.”

6. The applicants state that judgment was delivered by the High Court in their absence. I note that judgment was delivered on 24th July, 2024. There is a notice of appeal dated 7th August, 2024 and a letter bespeaking proceedings dated the same day, about 2 weeks after judgment was delivered. I have perused the said judgment which does not indicate whether parties were represented when it was delivered. A notice of appeal was required to be filed within 14 days. I do not consider there to be inordinate delay in those circumstances and I accept the reason offered why notice of appeal was not lodged within the required period. The applicants have not annexed a draft Memorandum of Appeal and I am therefore unable to decide whether the intended appeal has chances of success. The respondent, who was served with the application and a hearing notice did not respond to the same and I have no material on which to decide whether the respondent will be prejudiced if I grant the application.
7. I am satisfied that the applicants are entitled to a time- extension to lodge an appeal.
8. Let notice of appeal be lodged within seven (7) days and record of appeal be lodged within thirty (30) days thereafter. Costs of the Motion will be in the appeal.

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



S. OLE KANTAI

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

