



**Kaana Ka Arume Co Ltd v Nampaso (Civil Application E087 of 2024)
[2024] KECA 1637 (KLR) (15 November 2024) (Ruling)**

Neutral citation: [2024] KECA 1637 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPLICATION E087 OF 2024
PM GACHOKA, JA
NOVEMBER 15, 2024**

BETWEEN

KAANA KA ARUME CO LTD APPLICANT

AND

SAMSON KARINO OLE NAMPASO RESPONDENT

*(Appeal against the ruling of the Environment and Land Court
(E.L.C), Narok (M. Kullow, J.) delivered on 26th September 2018)*

RULING

1. By Notice of Motion dated 18th June 2024, the applicant has invoked rule 4 of the Court of Appeal Rules 2022 seeking leave of this Court to appeal out of time against the ruling of the Environment and Land Court (E.L.C), Narok (M. Kullow, J.) delivered on 26th September 2018. The application is supported by the grounds on the body of the Motion and the supporting affidavit of Pius Mburu, the applicant's chairperson.
2. The gist of the application is that the applicant was dissatisfied with the ruling of the trial court delivered on 26th September 2018. Resultantly, the applicant instructed its Counsel and filed its notice of appeal on 2nd October 2018. However, the memorandum of appeal and record of appeal were not lodged because the applicant could not obtain typed copies of the proceedings and the impugned ruling in time. The typed proceedings and ruling were made available in December 2018 and a certificate of delay issued on 22nd January 2019. The applicant contended that it was unaware of these developments as its instructing Counsel failed to notify it of the developments in the matter.
3. The applicant urged me to allow the application on the following grounds: being a land dispute between an individual and a registered juristic person, it stood to suffer irreparable harm; the mistake of an advocate should not be visited upon a client; and it was in the interest of justice that the application be granted as prayed.



4. The application is not opposed. Pursuant to directions of the Court served on 31st October 2024, parties were reminded to file their respective written submissions. However, as at the time of writing this ruling, none of the parties had impressed me with the same.
5. I have considered the application, the affidavit in support and the annexures thereto. The discretion to extend time is wide and unfettered. In that regard, a Court is called upon to exercise this discretion judiciously and with reason. It should not be exercised arbitrarily, capriciously and on sentimental grounds. (See Julius Kamau Kithaka vs. Waruguru Kithaka Nyaga & 2 others [2013] eKLR). It is also trite law that the discretion exercised under rule 4 of this Court's rules has no limit to the number of factors the court would consider so long as they are relevant. (See Fakir Mohamed vs. Joseph Mugambi & 2 others [2005] eKLR.)
6. The sole reason advanced by the applicant is that due to communication breakdown with its erstwhile advocates, it was unable to establish the developments or lack of following the filing of the notice of appeal dated 2nd October 2018. While this Court upholds the aphorism that the mistake of an advocate should not be visited upon his client, it is the responsibility of a litigant to advance his case and is up to speed with its progress.
7. In this case, all the applicant stated is that the record of appeal was ready in December 2018 and no other steps were taken by its previous advocates to safeguard its interests. In my view, if indeed the applicant was intent on prosecuting his appeal, nothing would have been easier than establishing either from his advocates or the court's registry as to the progress of the matter. It would then have been notified about the certificate of delay and immediately filed its memorandum of appeal and record of appeal.
8. In any event, the applicant has not attached a draft memorandum of appeal to establish the grounds it intends to rely on or even the impugned ruling. Furthermore, the applicant has not with exactitude expounded the dates of discovery of the averments set out in its application. I am therefore not persuaded that the applicant filed this application in good faith.
9. The applicant has not demonstrated sufficient reason as to warrant the exercise of discretion before this Court. Consequently, it is my finding that the Notice of Motion dated 18th June 2024 lacks merit. It is hereby dismissed in its entirety but with no orders as to costs.

DATED AND DELIVERED AT NAKURU THIS 15TH DAY OF NOVEMBER 2024.

M. GACHOKA C.Arb, FCIArb.

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JUDGE OF APPEAL

I certify that this is a True copy of the original

Signed

DEPUTY REGISTRAR

