



**Bararagu v Principal Secretary, Ministry of Agriculture Research,  
Livestock, Crop Development and Fisheries & another (Civil Application  
E215 of 2024) [2024] KECA 1593 (KLR) (8 November 2024) (Ruling)**

Neutral citation: [2024] KECA 1593 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E215 OF 2024  
F SICHALE, JA  
NOVEMBER 8, 2024**

**BETWEEN**

**ERNEST CHERIMO BARARAGU ..... APPLICANT**

**AND**

**THE PRINCIPAL SECRETARY, MINISTRY OF AGRICULTURE RESEARCH,  
LIVESTOCK, CROP DEVELOPMENT AND FISHERIES ..... 1<sup>ST</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

*(Being an Application for Extension of Time to lodge Memorandum of Appeal  
and Record of Appeal against the Ruling of the High Court of Kenya at Nairobi  
(Ngaah J), dated 6th October 2023 in (Nairobi JR Misc Appl No. 511 of 2015)*

**RULING**

1. By the Motion on Notice dated 6<sup>th</sup> May 2024, brought pursuant to the provisions of Sections 3A and 3B of the *Appellate Jurisdiction Act*, Rules 4, 86 and 87 of the Court of Appeal Rules 2010, Rules 3 and 11 of the Court of Appeal Practice Direction for Civil Appeals and Applications and Article 159 (2) (a) (d) of *the Constitution* of Kenya 2010, Ernest Cherimo Bararagu (the applicant herein) has invoked the discretion of this Court sitting as a Single Judge to issue the following orders:

- “i. Spent.
- ii. That the Honourable Court be pleased to grant the applicant leave to file and serve the Memorandum of Appeal and Record of Appeal out of time against the Ruling rendered by Nairobi Judicial Review Court in Misc Application No. 511 of 2015 delivered on 6<sup>th</sup> October 2023, by Hon Justice Ngaah against the applicant.



iii. That Honourable Court do make such further or other orders as it may deem just and equitable in the circumstances.”

2. The motion is supported on the grounds on the face of the motion and an affidavit sworn by Isaac Kimondo, counsel who has the conduct of this matter on behalf of the applicant who deposed inter alia that the impugned ruling was delivered 6<sup>th</sup> October 2023, pursuant to which they filled a Notice of Appeal dated 16<sup>th</sup> October 2023 and on the same day made a request for proceedings and the ruling from the registry.
3. He further deposed that on the same day (i.e. on 18<sup>th</sup> October 2023), when they were collecting the ruling from the registry, they enquired when the proceedings might be ready for collection but they were assured that when the same were ready; they would be notified and that they had no reason to doubt the undertaking given by the registry.
4. That, it was not until 24<sup>th</sup> April 2024, when they visited the registry to find out what was happening that they were informed that the proceedings were ready by 6<sup>th</sup> November 2023 but they were never informed as promised and no explanation was given as to what could have transpired.
5. He further deposed that their request for a Certificate of Delay was declined despite the fact they were not notified when the proceedings were ready.
6. There was no response on part of the respondents despite having been served with a copy of the hearing notice on 10<sup>th</sup> September 2024.
7. The applicant while basically reiterating the contents of the supporting affidavit in support of the motion submitted that the application had been brought without unreasonable delay and that further no prejudice would be occasioned to the respondents if the orders sought were granted, considering the fact that a Notice of Appeal had been filed and served within the stipulated timelines.
8. I have carefully considered the motion, the grounds thereof, the supporting affidavit, the applicant’s submissions, the cited authority in support and the law.
9. The principles upon which this Court exercises its discretion under Rule 4 to extend time or not have now taken a well beaten path. The Court has wide and unfettered discretion in deciding whether to extend time or not. However, in exercising its discretion the Court should do so judiciously.
10. See *Mwangi vs. Kenya Airways Limited* (2003) KLR 486 where this Court stated thus:

“Over the years, the Court has set out guidelines on what a single Judge Should consider when dealing with an application for extension of time under Rule 4 of the Rules. For instance, in *Leo Sila Mutiso V Rose Hellen Wangari Mwangi* (Civil Application No. Nai 255 of 1997 (unreported), the Court expressed itself thus;

“It is now well settled that the decision whether or not to extend 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.””
11. In the instant case and as regards the length of the delay, it is indeed not in dispute that the impugned ruling was delivered on 6<sup>th</sup> October 2023 and the applicant filed a Notice of Appeal on 16<sup>th</sup> October



2023, which was well within the stipulated timelines. The instant motion is dated 6<sup>th</sup> May 2024, which is a period of about 7 months from the date of the ruling which delay may not be inordinate given the period that typed proceedings take to be ready and which I take judicial notice of.

12. Be that as it may, it was contended by the applicant that the delay was due to the fact when they went to the registry to collect the impugned ruling on 18<sup>th</sup> October, 2023 and enquired when the proceedings would be ready, they were given an assurance/undertaking by the registry that they would be informed but to the contrary and to their surprise, they were not informed as promised and no explanation was given as to what could have gone wrong.
13. I do not find the reasons advanced for the delay by the applicant to be plausible for the following reasons; firstly, save for the applicant making general averments that they were given an assurance/undertaking by the registry that they would be informed when the proceedings were ready, there is nothing on the record to support these general averments.
14. The registry official who allegedly gave them this undertaking has not even been stated and there is nothing on the record to show that indeed the applicant applied for the proceedings or even made a follow up on the same.
15. Secondly the contention by the applicant that they had requested for a Certificate of Delay which was declined, is again not supported by any evidence and the same remains a general averment.
16. Additionally, the applicant seems not to have formally applied for the typed proceedings with a copy of his letter being made to the respondent's counsel as provided in Rule 84 of this Court's Rules.
17. It is in view of the foregoing that I find the reasons given for the delay not to be plausible/reasonable.
18. With regard to the possibility of the appeal succeeding, the applicant has not annexed a draft Memorandum of Appeal to enable this Court interrogate the merits or otherwise of the appeal. Consequently, I will say no more regarding this issue.
19. As regards prejudice, no evidence has been tendered before this Court to show that indeed the applicant will suffer any prejudice if the instant motion is not allowed.
20. Given the circumstances, I find that the applicant has not demonstrated and satisfied the existence of the principles for consideration in the exercise of my unfettered discretion pursuant to Rule 4 of this Court to extend time within which to file the intended appeal.
21. In view of the above, the inevitable conclusion that I arrive at is that the applicant's motion dated 6<sup>th</sup> May 2024, must suffer one fate which is dismissal and I accordingly dismiss the same in its entirety.
22. Since the respondents have not made any response to the motion, I will make no order as to costs.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 8<sup>TH</sup> DAY OF NOVEMBER 2024.**

**F. SICHALE**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

Signed

**DEPUTY REGISTRAR**

