



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Njera v Christoper (Civil Application E091 of 2024)
[2024] KECA 1590 (KLR) (8 November 2024) (Ruling)**

Neutral citation: [2024] KECA 1590 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION E091 OF 2024
HM OKWENGU, JA
NOVEMBER 8, 2024**

BETWEEN

MAR AGUMBA NJERA APPLICANT

AND

WILFRED CALEB OTIENO CHRISTOPHER RESPONDENT

*(Being an application for enlargement or extension of time to file and serve
Notice of Appeal out of time in an intended Appeal from the Judgment
of Environment and Land Court (ELC), (Asati, J.) dated 6th June, 2024)*

RULING

1. By a Notice of Motion dated 16th July, 2024, Mary Agumba Njera, the applicant, seeks leave under Rule 4 of the Court of Appeal Rules, 2010, to file a notice of appeal in regard to an intended appeal from the judgment of the High Court, (Asati, J.), delivered on 6th June, 2024, out of time.
2. The applicant contends that although judgment was delivered on 6th June, 2024, she only got to know about the judgment on 26th June, 2024. She explains in her affidavit that her advocate wrote a letter dated 10th June, 2024, informing her of the judgment, and the letter was delivered to her cousin one Rev. Joshua Orai who delayed in giving her the letter. She explains that she is dissatisfied with the judgment of the court as she believes her suit was dismissed wrongly hence her wish to appeal.
3. The respondent, Wilfred Caleb Otieno Christopher Omondi, has opposed the motion, through a replying affidavit sworn on 2nd August, 2024, in which he maintains that the applicant's intended appeal has no merit or chances of success, and that the delay in filing the notice of appeal is inordinate and the reasons given for the delay are not sufficient.
4. I have carefully considered the motion before me. Under Rule 4 of the Court of Appeal Rules, this Court has discretion to extend time provided by the Court rules, however, such discretion must be



exercised judiciously. This means that an applicant must provide justification for the exercise of the Court's discretion.

5. In this case, the suit between the applicant and the respondent, subject of the intended appeal arose from the applicant's claim for adverse possession in regard to Land Parcel No. Kisumu/Wathorego/114. This property was originally owned by the applicant's husband, but the respondent claimed to have bought it from the applicant's husband (who is now deceased), before the process of adjudication was completed and therefore the title to the property was issued in the respondent's name. The applicant maintained that she is the one who has been farming on the property.
6. Upon considering the evidence and the law, the learned Judge found that the applicant had not proved her claim and therefore dismissed her suit. It is evident that the applicant is an old lady. She has explained that her advocate had to communicate to her through her cousin, meaning that she does not have an address of her own. Her explanation is plausible. Although the judgment was delivered on 6th June, 2024, she filed her motion on 16th July, 2024, about three weeks after learning of the judgment on 26th June, 2024. It is evident that the delay in filing the notice of appeal was not inordinate.
7. In the circumstances of this case, it would be fair and just to extend time to enable the applicant exercise her right of appeal. The application is therefore allowed and time extended for the applicant to file the notice of appeal within fourteen (14) days from the date hereof.

DATED AND DELIVERED AT KISUMU THIS 8TH DAY OF NOVEMBER, 2024.

HANNAH OKWENGU

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

