



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kirera v M’Kirera & 2 others (Civil Application E073 of 2022)  
[2023] KECA 2 (KLR) (17 January 2023) (Ruling)**

Neutral citation: [2023] KECA 2 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPLICATION E073 OF 2022  
LK KIMARU, JA  
JANUARY 17, 2023**

**BETWEEN**

**SAMMY MUGAMBI KIRERA ..... INTENDED APPELLANT**

**AND**

**EVANGELINE NTHANGA M’KIRERA ..... 1<sup>ST</sup> RESPONDENT**

**JENIFFER NKATHA MARANGU ..... 2<sup>ND</sup> RESPONDENT**

**HARRIET KENDI KIRRINYA ..... 3<sup>RD</sup> RESPONDENT**

*(Being an Application for extension of time to file and serve Record of Appeal out of time from the Judgment of the High Court of Kenya at Meru, (Onginjo, J.), dated 12th May, 2020 in HCCA No. 98 of 2019)*

**RULING**

1. The applicant, Sammy Mugambi Kirera, has filed a notice of motion under rule 4 of the [Court of Appeal Rules](#) seeking the leave of this court to be granted extension of time to file appeal out of time against the judgment delivered by the High Court sitting at Meru (HCCA No 98 of 2019), which was delivered on May 12, 2020.
2. The applicant has stated the reason for the delay in filing the appeal in time was on account of the then prevailing covid-19 situation and the containment measures that were put in place. Although the applicant had made an application to be supplied with the proceedings in time, i.e. on May 25, 2020, the same were not ready until May 13, 2021. The certificate of delay was issued on March 25, 2022. The applicant filed the present application on September 29, 2022. The applicant further explains the reason for the delay in filing the present application was due to financial hardship that he experienced at the time that he was unable to instruct counsel on time.



3. The applicant states that he has an appeal that has high chances of success noting that the trial court failed to consider all the relevant facts including enjoining third parties to the proceedings when clearly there was no need to. The applicant pleads with the court to give him a chance to ventilate his appeal so that the interest of justice may be served. The appeal is unopposed.
4. The principles to be considered by this court in determining whether or not to grant the application for extension of time under rule 4 of the Court of Appeal Rules 2022 are well settled. This court has unfettered discretion to allow or disallow such an application for extension of time. This discretion is, however, guided *inter alia*, by the following principles; the applicant must give a satisfactory reason for the delay taking into account the period of delay; the applicant must have made the application for extension of time without undue delay; the applicant must show that the appeal he intends to file is arguable or at least is meritorious hence the requirement that a draft memorandum of appeal should be annexed to the affidavit in support of the application for extension of time; and finally, it is established that the respondents will not be unduly prejudiced by the grant of the order of extension of time. (See Vishva Store Suppliers Company Limited v RSR [2006] Limited [2020] eKLR).
5. In the present application, it was clear to this court that the application is for dismissal. Although the applicant satisfactorily explained the delay in failing to obtain the typed copies of the proceedings in time, he failed to give a reasonable explanation why he failed to collect the proceedings when he was notified that the proceedings were ready for collection by the court. The applicant further failed to give a reasonable explanation for the delay in obtaining the certificate of delay from the court. This was from May 13, 2021 to March 25, 2022. Furthermore, the applicant did not give a satisfactory explanation why he did not file the present application until after the expiry of six months from the time he obtained the certificate of delay. The delays, considered cumulatively, is evidence of inexcusable indolence that the court cannot countenance. It disentitles the applicant to the exercise of discretion by this court. It is not clear from the draft memorandum of appeal if the applicant will have appeal that may succeed on merits. This court formed the view that the respondents will be unduly prejudiced taking into consideration the history of litigation between the applicant and the respondents.
6. In the premises therefore, this application for extension of time to file appeal out of time is disallowed.
7. It is hereby dismissed but with no orders as to costs.

**DATED AT NYERI THIS 17TH DAY OF JANUARY, 2023.**

**L. KIMARU**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**

