



REPUBLIC OF KENYA



KENYA LAW
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Ruriga v Njuki (Civil Application 100 of 2020) [2023] KECA 3 (KLR) (17 January 2023) (Ruling)

Neutral citation: [2023] KECA 3 (KLR)

REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION 100 OF 2020
LK KIMARU, JA
JANUARY 17, 2023

BETWEEN

ELIUD MURAGE RURIGA APPLICANT

AND

JECINTA WANJIKU NJUKI RESPONDENT

(An Application for extension of time to file and serve the Notice of Appeal, Memorandum of Appeal and Record of Appeal out of time against the Judgment of the Environment and Land Court of Kenya at Kerugoya (Cherono, J.) dated 12th June, 2020 in E.L.C. Case No. 116 of 2017)

RULING

1. Before this court is a notice of motion dated October 7, 2020, but filed before this court on October 15, 2020. The applicant, Eliud Murage Ruriga, has made this application for extension of time to file appeal out of time pursuant to Rule 4 of the *Court of Appeal Rules*. The applicant explained the reasons for the delay in lodging the appeal in time in the affidavit in support of the notice of motion. He states that after the delivery of the judgment, he was unable to raise the legal fees demanded by his advocate. However, two months later, he made effort to substantially settle the fees demanded by the advocate. Unfortunately, by that time, the period by which the Notice of Appeal was supposed to have been filed had expired. The applicant pleads with the court to give him an opportunity to ventilate his appeal on merits by granting his application for extension of time to file the appeal out of time.
2. Although the respondent, Jecinta Wanjiku Njuki, appointed an advocate to act on her behalf in this application, no papers in opposition to the application were filed. The application was therefore unopposed.
3. This court's discretion under Rule 4 of the *Court of Appeal Rules, 2022*, is unfettered. As was held by this court, (R. N. Nambuye, J.A.), in *Kibunja v Kariuki & another* [2021] KECA 354 (KLR):
4. The principles that guide the court in the exercise of its mandate under said rule are set out in the very case law that the Applicant has relied upon...



5. From the above, the factors I am supposed to take into consideration in the determination of an application of this nature are first, the length of the delay, secondly, reason(s) of the delay. Thirdly, possible arguability of the intended appeal and fourthly, any prejudice to be suffered by the opposite party should the relief sought by the applicant be granted. Fourthly (sic), any public interest that may be involved in the matter”.
6. In the present application, having read the notice of motion and the supporting affidavit, this court is satisfied by the reasons given by the applicant for the delay in lodging the Notice of Appeal in time. The period of delay was not inordinate. It was only two months. Immediately the applicant instructed his advocate to file the present application, the same was filed without undue delay. The draft Memorandum of Appeal discloses grounds of appeal which cannot be considered unarguable. From the facts presented to Court in this application, it is not obvious if the Respondent will suffer any prejudice if the court exercises its discretion in the applicant’s favour.
7. The respondent had the opportunity to present her side of the story but made the choice not to.
8. In the premises therefore, the application shall be allowed. The applicant is granted fifteen (15) days to file and serve the Notice of Appeal. Thereafter, the Applicant has a furtherthirty (30) days to file and serve the Record of Appeal. There shall be 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

