



REPUBLIC OF KENYA



KENYA LAW
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**Mathii v Bedan (Civil Appeal (Application) 35 of 2019)
[2023] KECA 1617 (KLR) (31 May 2023) (Ruling)**

Neutral citation: [2023] KECA 1617 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPEAL (APPLICATION) 35 OF 2019
AO MUCHELULE, JA
MAY 31, 2023**

BETWEEN

FRANCIS MAINA MATHII APPLICANT

AND

PETER NGURU BEDAN RESPONDENT

(An application for extension of time to file and serve the Memorandum of Appeal and the Record of Appeal out of time in an intended appeal against the Ruling of the Environment & Land Court of Kenya at Murang'a (J.G Kemei, J.) dated 31st July 2018 In ELC Case No. 415 'B' of 2017)

RULING

1. The history of this dispute is that in HCCC No. 36 of 1988 at Nyeri, the applicant Francis Maina Mathii sued the respondent seeking to recover land parcel No. Loc. 14/Gakurwe/82. He acknowledged that the respondent had been in occupation of the suit land since 1968 and had developed it. He wanted the developments to be valued so that he could pay for them. Following hearing, the court held that the applicant was entitled to the land, and could get it upon payment for the developments. The respondent's claim that he had bought the suit land from the applicant's father was dismissed. The judgment was on 25th January 2001.
2. By an application dated 30th May 2017 in ELC Case No. 415 "B" of 2017, the applicant sought the eviction of the respondent from the suit land and also that the land be transferred to him. The court found that the applicant was seeking to execute a judgment that was more than 12 years old, which he could not do because of the provisions of sections 4(4) and 7 of the *Limitation Actions Act*. The ruling was on 25th January 2018. By application dated 22nd February 2018, the applicant sought, among other things, the review of the above ruling and for the court to give directions of the valuation of the suit property. The application was dismissed with costs on 31st July 2018.



3. The applicant was aggrieved by the dismissal and filed a notice of appeal dated 7th August 2018. In the present application dated 8th February 2021 the applicant has sought the extension of time to file and serve a Memorandum of Appeal and the Record of Appeal out of time. He blamed the delay on the protracted nature of the dispute between him and the respondent. This protracted nature had led to his being unable to value the developments that had been done on the land.
4. The application was served but did not elicit any response. No written submissions were filed.
5. Rule 4 of the *Court of Appeal Rules, 2022* provides as follows:-

“The Court may on such terms as it thinks just, by order extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorised or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.”
6. Under the Rule, the court is entitled to exercise its unfettered discretion judiciously to allow or not to allow extension of time to appeal, bearing in mind the peculiar circumstances of each case. The starting point is that, parties to a dispute must endeavour to operate within the statutory timelines that have been provided. Where a party has not, and in seeking extension, he has to explain why there has been a delay. The delay should not be inordinate, and there should not be undue prejudice to the respondent on account of such delay. The court will look at the appeal (or intended appeal) to see if it has possible chances of success. There would be no need of extending time in respect of a manifestly frivolous appeal. Lastly, the court will consider whether the dispute has any public interest implications. These principles have been reiterated in various of this Court’s decisions, including *Fakir Mohamed –v- Joseph Mugambi & 2 Others* [2005]eKLR, *Edith Gichugu Koine –v- Stephen Njagi Thoithi* [2014]eKLR and *Cargil Kenya Limited Nawal –v- National Agricultural Export Development Board* [2015]eKLR.
7. I hasten to add that justice is best served where, as much as possible, a dispute is heard and determined on its merits. The applicant did not annex a Draft Memorandum of Appeal to his supporting affidavit, but I can discern from his paperwork that his complaint was that he got a judgment which he has not been able to benefit from because of the superior court’s determination that under sections 4(4) and 7 of the *Limitation of Actions Act*, any execution was time barred.
8. The applicant was unrepresented, but the fact that it took about 2 years and 7 months for him to bring this application says much about his indulgent attitude. He cannot say that he was serious in his intention to appeal. He has not offered any plausible reasons for the delay.
9. In all, I find no merit in the application which I dismiss.

DATED AND DELIVERED AT NYERI THIS 31ST MAY 2023

A.O. MUCHELULE

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

