



**Karani v Mosiro & 3 others (Civil Application 068 of 2022)  
[2023] KECA 489 (KLR) (12 May 2023) (Ruling)**

Neutral citation: [2023] KECA 489 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CIVIL APPLICATION 068 OF 2022  
LA ACHODE, JA  
MAY 12, 2023**

**BETWEEN**

**TUMBOYA OLE KARANI ..... APPLICANT**

**AND**

**LEISI OLE MOSIRO ..... 1<sup>ST</sup> RESPONDENT**

**DEPUTY COUNTY COMMISSIONER NAROK WEST SUB-COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**THE CABINET SECRETARY FOR LAND, AND URBAN DEVELOPMENT ..... 3<sup>RD</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

*(Being an application for extension of time to lodge appeal out of time following judgment by Narok Environment & Land Court (Mboga J), delivered on 21st July, 2022 In Judicial Review Application No.002 of 2021)*

**RULING**

1. In his notice of motion dated October 24, 2022 brought under rule 4 of this *Court's Rule*, the appellant, Tumboya Ole Karani, seeks for extension of time to file his appeal out of time. The intended appeal is against the judgment of Mboga J. delivered at Narok Environment & Land Court; judicial review application No 002 of 2021.
2. Leiso ole Mosiro, the Deputy County Commissioner Narok West Sub-County, the Cabinet Secretary for Land, Housing and Urban Development, and the Attorney General are the 1<sup>st</sup> to 4<sup>th</sup> respondents respectively.



3. This application is based on the grounds on its face, and the supporting affidavit sworn on the October 24, 2022 by the applicant. The said grounds are that the Environment & Land Court delivered its ruling on July 21, 2022.
4. That the applicant was dissatisfied with the said ruling and intended to file an appeal against it, but his counsel who had sought an elective post as a Senator in Narok County was not available in his office to take instructions for the filing of the appeal. He urged that in the interest of justice, this court should extend time to allow him to file appeal out of time against the ruling in Narok ELC Judicial Review No E002 of 2021.
5. The back ground of this application is that the applicant was allocated plot No 526 (suit land) within Leshuta Land Adjudication section in Narok. The Adjudication and Settlement Officer Narok South finished the adjudication process and issued a notice of completion for Leshuta Land Adjudication and settlement scheme. Consequently, the 1<sup>st</sup> respondent lodged an objection number 84 regarding the suit land.
6. The objection was heard and determined on February 8, 2019 by the Land Adjudication Officer Narok South who dismissed the said objection.
7. The 1<sup>st</sup> respondent was dissatisfied by the decision of the Land Adjudication Officer Narok South and he filed an appeal, which was heard by the 2<sup>nd</sup> respondent. In his decision, the 2<sup>nd</sup> respondent ordered subdivision of the suit land in to two portions between the applicant and the 1<sup>st</sup> respondent respectively.
8. The applicant was dissatisfied by the decision of the 2<sup>nd</sup> respondent and he filed judicial review application No E002 of 2021 at the Narok Environment & Land Court. The learned judge considered the application before him, found that it lacked merit and dismissed it.
9. The applicant was still aggrieved by the above decision and he filed an application seeking orders to allow him appeal out of time against it. The application was served upon the respondents and the affidavit of service dated November 30, 2022 is on record. The respondents, filed no reply to the application nor did they file written submissions.
10. I have anxiously considered the motion before me. Rule 4 of this [Court's Rules](#) 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 authorized 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”
11. By dint of rule 4, this court has discretion in considering an application for extension of time. The judgment of the superior court was delivered on July 21, 2022. The applicant is required to file the notice of appeal within 14 days of the judgment. This application was made on the October 24, 2022, approximately four months after the ruling of the superior court.
12. In [Karny Zabrya & another v Shalom Levi](#) [2018] eKLR, this court stated that:

“Some of the considerations to be borne in mind while dealing with an application for extension of time include the length of the delay involved, the reason(s) for the delay, the possible prejudice, if any, that each party stands to suffer depending on how the court exercises its discretion; the conduct of the parties; the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has a



constitutionally underpinned right of appeal; the need to protect a party's opportunity to fully agitate its dispute, against the need to ensure timely resolution of disputes; the public interest issues implicated in the appeal or intended appeal; and whether, prima facie, the intended appeal has chances of success or is a mere frivolity. In taking into account the last consideration, it must be born in mind that it is not the role of a single judge to determine definitively the merits of the intended appeal. That is for the full court if and when it is ultimately presented with the appeal”.

13. In the present application, the applicant gave reasons for not filing his appeal on time in paragraph 12 of his supporting affidavit thus:

“That I was dissatisfied by the ruling and i have been going to the offices of my previous lawyer but who I did not manage to meet after the ruling since he was a political aspirant for the senate seat in Narok”

14. It is apparent that the impugned judgment was pronounced during the electioneering period. Therefore, it is a possibility that the applicant may have been unable to access his counsel during that time. As noted earlier in this ruling, the respondents did not file a reply or written submission in opposition to the application.

15. Ultimately, I exercise my discretion to allow the application dated October 24, 2022 in the following terms:

- a. The applicant has fourteen (14) days from the date of the ruling to file and serve notice of appeal.
- b. The applicant has sixty (60) days from the date of the lodging of the notice of appeal in item 1 above to file and serve the record of appeal.
- c. The applicant shall bear the costs of this application.
- d. In default of either item a) or b) above, the leave granted herein shall stand lapsed.

**DATED AND DELIVERED AT NAKURU THIS 12<sup>TH</sup> DAY OF MAY, 2023.**

**L. ACHODE**

.....

**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**

