



**Sang (Suing as the legal representative of the Estate of Marambi Kipsanga Ngasura (Deceased) v Koroso (Civil Application E074 of 2022) [2023] KECA 510 (KLR) (12 May 2023) (Ruling)**

Neutral citation: [2023] KECA 510 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CIVIL APPLICATION E074 OF 2022  
FA OCHIENG, JA  
MAY 12, 2023**

**BETWEEN**

**JOHANA KIPKEMOI SANG (SUING AS THE LEGAL REPRESENTATIVE  
OF THE ESTATE OF MARAMBI KIPSANGA NGASURA  
(DECEASED) ..... APPLICANT**

**AND**

**RHODA MOIGE KOROSO ..... RESPONDENT**

*(An application for leave to file an appeal out of time from the judgment  
of the Environment and Land Court at Kericho (J. M. Onyango,  
J.) delivered on 17th February, 2021 in ELC Case No. 272 of 2016)*

**RULING**

1. It is common ground that the judgment against which the applicant wishes to lodge an appeal, was delivered on February 17, 2021. It is further common ground that at the material time, the advocates representing the applicant were Messrs Akinyi & Co. Advocates. The said advocates filed a Notice of Appeal on February 24, 2021.
2. The respondent told this Court that she was served with the Notice of Appeal on February 26, 2021.
3. It was the applicant's case that although he had instructed his advocates to file an appeal; and as he believed his said instructions had been acted upon, he had to engage another advocate, later, after discovering that the appeal had not yet been filed.
4. The respondent contends that if the applicant had instructed Messrs Simiyu & Co. Advocates, he could have done so directly. Therefore, the respondent expressed doubt about the assertion by the applicant, that he had instructed that law firm through one Martha Chepkorir.



5. The respondent wondered what relationship existed between the applicant and the said Martha Chepkorir.
6. In my considered opinion, there is no law which bars a person from giving instructions to an advocate, through someone else. I therefore find no reason to doubt the fact that the said Martha Chepkorir issued instructions on behalf of the applicant.
7. In his further affidavit, the applicant explained that Martha Chepkorir was his mother. Therefore, I find nothing which would be strange about a payment being made on behalf of the applicant, by his mother.
8. However, I find that one aspect of the facts presented by the applicant, raised some concern. The notice of appeal was filed on February 24, 2021, and it was thereafter served upon the respondent on February 26, 2021.
9. According to the applicant, he instructed Messrs Simiyu & Co. Advocates, because the firm of Akinyi & Co. Advocates;  

“ ... dragged its feet and necessitated to engage another Advocate known as Simiyu & Co. Advocates to file the said appeal.”
10. Surely, the period between February 24, 2021, (when the notice of appeal was filed) and February 27, 2021 (when the new advocates were instructed), is only 3 days! It is inconceivable that the period of 3 days could be deemed as constituting a delay of such proportions as to be described in the manner which the applicant did herein.
11. I have an uneasy feeling about that aspect of the facts. But I also appreciate that my decision should not be founded upon my feelings!
12. Messrs Simiyu & Co. Advocates assured the applicant that they had filed the appeal. The said advocates even notified the applicant that the appeal had been fixed for hearing on August 3, 2022.
13. When the applicant went to the Court, on the scheduled date, he was surprised to learn that the Court was not sitting at all, because the court was on recess.
14. Following the said information, the applicant visited the registry on August 24, 2022, to ascertain the position. At the registry the applicant was informed that his appeal had never been filed at the Court of Appeal.
15. In my considered opinion, the applicant cannot have had any reason to make an application for extension of time prior to August 24, 2022, as he believed that his appeal was already filed in court.
16. Although, the delay, of itself appears to be inordinate, I find that the same has been explained by the applicant.
17. Accordingly, I do hereby grant leave to the applicant to appeal out of time. In that regard, the applicant is allowed a period of 15 days from today to file the appeal.
18. Although the application is successful, I hold the view that the respondent ought not to be condemned to pay costs thereof to the applicant. I so hold because the reasons which caused the delay in the filing of the appeal were wholly attributed to the advocates who had previously been representing the applicant.
19. I hold that each party will meet his own costs of the notice of motion dated November 1, 2022.

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



**F. OCHIENG**

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**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**

