



Mayon (Suing as legal representatives of the Estate of Saginoi Ole Ndetuka aka Sagindi Ole Ndentuka - Deceased) v Mwai & 4 others (Civil Application E171 of 2023) [2023] KECA 914 (KLR) (24 July 2023) (Ruling)

Neutral citation: [2023] KECA 914 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E171 OF 2023
HM OKWENGU, JA
JULY 24, 2023**

BETWEEN

JOSEPH SILEMI MAYON (SUING AS LEGAL REPRESENTATIVES OF THE ESTATE OF SAGINOI OLE NDETUKA AKA SAGINDI OLE NDETUKA - DECEASED) APPLICANT

AND

**ANTHONY MWANIKI MWAI 1ST RESPONDENT
WILLIAM KOIPITAT MAYON 2ND RESPONDENT
PAUL MUSAU MWANGANGI 3RD RESPONDENT
COUNTY LAND REGISTRAR KAJIADO 4TH RESPONDENT
EQUITY BANK LIMITED 5TH RESPONDENT**

(Being an application for leave to extend time to file record of appeal out of time in an appeal proffered against the judgment and decree of the Environment and Land Court at Kajialdo (Maxwel Gicheru, J) delivered on 15th November 2022 in ELC Kajialdo Civil No. 51 of 2018))

RULING

1. By a notice of motion dated April 4, 2023, the applicant Joseph Silemi Mayon who is indicated therein as appellant seeks extension of time to file the record of appeal against the judgment and decree of Maxwel Gicheru, J in Kajialdo, Environment and Land Court (ELC), Case No. 51 of 2018 delivered on November 15, 2022.
2. According to the grounds stated on the face of the motion the reason for the failure to file the appeal in time was the fact that the applicant received typed proceedings after time to lodge the appeal had already lapsed. The applicant deposes in his affidavit sworn in support of the motion, that he lodged



- a notice of appeal on November 17, 2022, which was within time. Thereafter, he applied for typed proceedings and certified copies of the judgment and served the letter on the respondents' advocates.
3. However, despite consistent follow-ups with the registry at Kajiado, he was only notified of the proceedings having been typed, through an email on April 19, 2023. His advocate made payment and requested for a certificate of delay and the same was issued to him on April 26, 2023. The applicant contends that he has an appeal which is merited and has high chances of success. He has annexed to his affidavit a copy of his memorandum of appeal which he deposes is dated May 4, 2023 and prays for time to file the record of appeal. It is apparent that the date indicated by the applicant is wrong, as the affidavit was sworn on April 4, 2023. Moreover, the date on the memorandum of appeal which is annexed to his affidavit is actually April 4, 2023.
 4. The respondents were all duly served with the hearing notices through email on June 1, 2023, through their advocate, wherein they were informed that the hearing of the motion would proceed by way of written submissions. However, none of the respondents has filed any replying affidavit nor have they filed any written submissions.
 5. Rule 4 of the *Court of Appeal Rules*, 2022 states 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”.
 6. The principles upon which such an application for extension of time may be determined are now well settled, having been restated in many decisions. The Supreme Court in *Nicholas Kiptoo Arap Salat vs Independent Electoral & Boundaries Commission & 7 others* [2014] eKLR, has distilled and restated the principles. Suffice to state that a party seeking extension of time must lay the basis for the exercise of the Court's discretion by showing that there was a good reason for the delay in filing the appeal.
 7. The applicant actually filed the notice of appeal within time. So his application relates to filing of the record of appeal. The explanation given for the delay is the time taken for the applicant to be supplied with typed copies of the proceedings and judgment. The applicant has produced a certificate of delay indicating that the time taken for preparation and delivery of certified copies of proceedings and judgment, was from November 17, 2022 to April 19, 2023.
 8. Under the proviso to Rule 84(1) of the *Court of Appeal Rules*, 2022, where an application for a copy of the proceedings in the superior court has been made in writing and a copy of the letter bespeaking the proceedings served upon the respondent, the time certified as required for the preparation and delivery of the copies of the proceedings and ruling is excluded from the computation of time for filing the record of appeal. The applicant has demonstrated that he complied with the requirement of Rule 84(1) & (2), and therefore, the time that has been certified as having been required for the preparation of the proceedings must be excluded from the computation of the time for filing the record of appeal. In effect, the applicant came to court immediately upon receiving the certified copies of proceedings and ruling. He made his application without undue delay and the delay is actually covered under the proviso to Rule 84 of the *Court of Appeal Rules*.
 9. For this reason, I allow the applicant's motion and extend time for the filing of the record of appeal. The record of appeal shall be filed within 14 days from the date of this Ruling. I make no orders as to costs.

DATED AND DELIVERED AT NAIROBI THIS 24TH DAY OF JULY, 2023.



HANNAH OKWENGU

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

