



**Eddie Kenya Limited v Anasi (Sued as the legal administratrix of the Estate of Abigael Kemunto Opande (Deceased) & 5 others (Civil Application E034 of 2023) [2023] KECA 1091 (KLR) (22 September 2023) (Ruling)**

Neutral citation: [2023] KECA 1091 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CIVIL APPLICATION E034 OF 2023  
F TUIYOTT, JA  
SEPTEMBER 22, 2023**

**BETWEEN**

**EDDIE KENYA LIMITED ..... APPLICANT**

**AND**

**IRENE MWANGO ANASI (SUED AS THE LEGAL ADMINISTRATRIX OF THE ESATE OF ABIGAEL KEMUNTO OPANDE (DECEASED) ..... 1<sup>ST</sup> RESPONDENT**

**JARED TOM NGITI OPANDE ..... 2<sup>ND</sup> RESPONDENT**

**STEVE NYAGAKA ORORA ..... 3<sup>RD</sup> RESPONDENT**

**THE LAND REGISTRAR, KISII COUNTY ..... 4<sup>TH</sup> RESPONDENT**

**THE HON ATTORNEY GENERAL ..... 5<sup>TH</sup> RESPONDENT**

**INKA HOLDINGS LIMITED ..... 6<sup>TH</sup> RESPONDENT**

*(Being an application for extension of time to file an Appeal out of time from the judgment of Environment and Land Court at Kisii (Jane M. Onyango, J.) Dated 16th February, 2023 in ELC No. 165 of 2016)*

**RULING**

1. There is a notice of appeal by the applicant Eedi Kenya Limited dated March 8, 2023 and lodged with the Environment and Land Court (ELRC) Registry at Kisii on March 9, 2023. By a notice of motion dated March 13, 2023, this Court is asked to extend the period for filing a notice of appeal against the judgment of JM Onyango J delivered on February 16, 2023 in Kisii Environment and Land Court Case No 165 of 2016 and in the same breath the Court to 'validate' the notice of appeal already filed out of time.



2. In an affidavit sworn by one Dipen Dodhia, a director of the applicant on March 13, 2023, he deposes that in early February 2023 he was diagnosed with cancer requiring urgent treatment in India from February 11, 2023, where he remained until February 27, 2023. He had no access to his phone or email during this period and the applicant's advocates could not get in touch with him for purposes of seeking instructions on whether to appeal the judgment yet he was the only officer in the company who could do so. Once he was able to meet the said advocates, and acting upon his instructions, they filed a notice of appeal on March 8, 2023, albeit 6 days outside the time prescribed by Rule 77(2) of the Rules of this Court. In addition, and on even date the said advocates, wrote a letter to the deputy registrar bespeaking typed proceedings and a certified copy of the judgment. Both the notice of appeal and the said letter were served upon all the respondents on March 9, 2023. He contends that the appeal is arguable as it raises several issues which have high chance of success. A draft of the memorandum of appeal is attached to the application.
3. In a letter dated July 14, 2023 by M/s Nyamurongi & Company Advocates, advocates for the 2<sup>nd</sup>, 3<sup>rd</sup> and 6<sup>th</sup> respondents, indicates that the said 2<sup>nd</sup>, 3<sup>rd</sup> and 6<sup>th</sup> respondents are not opposed to the application being granted. There was no response to the application by the other respondents. As things stand it is unopposed and the depositions in the affidavit in support are uncontroverted.
4. Rule 4 of the *Court of Appeal Rules, 2022* gives this Court discretion to extend time prescribed for the doing of anything under the Rules or by order of Court. Though unfettered, the exercise of the discretion is guided by well settled principles which are a consideration of the length of the delay, the reasons for the delay, possibly, the chances of the appeal succeeding if the application is granted and last, the degree of prejudice to the respondent if the application is granted. See amongst many decisions on this point the decision in *Leo Sila Mutiso vs Rose Hellen Wangari Mwangi [1999] 2E A 231*.
5. A notice of appeal was lodged with the ELC registry on March 9, 2023, outside the 14 days' time prescribed by Rule 77. This was six (6) days outside the statutory timeline. The explanation given for the delay is that the person capable of issuing instructions for lodging of the notice of appeal was unwell and undergoing cancer treatment in India. This does seem to be as a plausible reason for the small delay. In addition, none of the respondents say that the grant of the order sought will prejudice them.
6. In the result I am inclined to exercise my discretion in favour of the applicant. The notice of motion dated March 13, 2023 is hereby allowed. The notice of appeal dated March 8, 2023 and lodged on March 9, 2023 is deemed as duly filed and served. The applicant shall file and serve the appeal within 30 days of today. Each party shall bear its own costs of the application as it was unopposed.

**DATED AND DELIVERED AT KISUMU THIS 22<sup>ND</sup> DAY OF SEPTEMBER, 2023.**

**F. TUIYOTT**

.....

**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**

