



REPUBLIC OF KENYA



KENYA LAW
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**Wanyama v Lyani & another (Civil Application 163 of 2020)
[2023] KECA 1090 (KLR) (22 September 2023) (Ruling)**

Neutral citation: [2023] KECA 1090 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION 163 OF 2020
PO KIAGE, JA
SEPTEMBER 22, 2023**

BETWEEN

JOSEPH MUMERO WANYAMA APPLICANT

AND

JAFRED WANJALA LYANI 1ST RESPONDENT

HESBORRN MURULE LUSWETI 2ND RESPONDENT

*(An application for extension of time to file and serve the record of appeal
from the Judgement of the Environment and Land Court of Kenya at
Bungoma (B. Oloa, J.) dated 27th May, 2020 in ELC Case No. 26 of 2011 (OS))*

RULING

1. The applicant, Joseph Mумero Wanyama has brought the Motion dated November 26, 2020, seeking the following prayers *inter alia*;
 2. This Honourable Court be pleased to extend time for filing of the Record of Appeal against the judgment dated May 27, 2020, of the High Court of Kenya sitting in Bungoma (Boaz N Olao) in ELC No 26 of 2011, Joseph Mумero vs Jared Wanjala Lyani & Another.
 3. This Honourable Court be pleased to deem the Record of Appeal filed on the 16th of November, 2020, as properly filed.
2. Being a Rule 4 application, I bear in mind the sound principles devised by this Court over the years as espoused in *Leosila Mutiso Vs Rose Hellen Wangari Mwangi*(1999) 2 EA 231 as follows;

It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this Court takes into account in deciding whether to grant an extension of time are: first the



length of the delay, secondly, the reason for the delay; thirdly (possibly) the chances of the appeal succeeding if the application is granted; and, fourthly, the degree of prejudice to the respondent if the application is _____ granted”

3. From the evidence placed before me, the impugned judgment was delivered on May 27, 2020. Dissatisfied, the applicant through his advocates timely filed a notice of appeal on June 10, 2020. A letter bespeaking the proceedings dated June 17, 2020 was also filed and on the following day, the requisite fees of Kshs. 3,000.00 was paid to the court. On October 2, 2020, his then advocates, M/s Annet Mumalasi & Co Advocates, informed the applicant that they were no longer able to represent him in the matter as Ms Mumalasi was on the brink of being sworn in as a Judge of the High Court.
4. The appellant promptly changed advocates to the ones currently on record. The advocates followed up on the typed proceedings as evidenced by the letter to the registry dated 8th October. Thereafter, the typed proceedings were ready for collection on October 30, 2020. Another letter was written to the registry dated November 9, 2020 requesting a certificate of delay. The same was issued on the instant date indicating that the time taken to type the proceedings was from June 18, 2020 to October 30, 2020. The record of appeal was timely filed on November 16, 2020.
5. From the foregoing, the appellant did not offend any of the prerequisite timelines as stipulated in this Court's Rules, therefore, this application was not necessary.
6. It would seem it was brought out of an abundance of caution since the certificate of delay should have been fully curative of the delay. See Rule 84. The record of appeal was properly filed. I order that if the appellant had not served the respondents with the said record hereby order that time has been extended for the service to be effected within 14 days of this ruling.

Costs shall be in the appeal.

Dated and delivered at Kisumu this 22nd day of September, 2023.

P. O. KIAGE

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

