



**Wanjau v Muguongo (Suing for himself and ob behalf of the Estate
of Ephraim Muguongo Wanjau (Deceased) (Civil Application
E060 of 2023) [2023] KECA 1623 (KLR) (27 October 2023) (Ruling)**

Neutral citation: [2023] KECA 1623 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E060 OF 2023
AO MUCHELULE, JA
OCTOBER 27, 2023**

BETWEEN

SAMUEL MAINA WANJAU APPLICANT

AND

**D TIMOTHY KAROKI MUGUONGO (SUING FOR HIMSELF AND
OB BEHALF OF THE ESTATE OF EPHRAIM MUGUONGO WANJAU
(DECEASED) RESPONDENT**

*(Being an application for an extension of time to file a notice of appeal out
of time from the judgment of the Environment and Land Court of Kenya at
Nyeri (J.O. Ogola, J.) dated 16th June 2023 in E.L.C. NO. 166 OF 2014 (OS))*

RULING

1. The applicant Samwel Maina Wanjau is the registered proprietor of land parcel No. Iria-ini/ Kairia/2089. Before the Environment and Land Court (J.O. Olola, J.) at Nyeri, he was sued by the respondent Timothy Karoki Muguongo who claimed that this was family land and that he had been registered to hold 8.45 acres of the same for the respondent. The applicant unsuccessfully opposed the suit, as the ELC Court found for the respondent and ordered that the trust be determined and that the 8.45 acres of the suit land be transferred to the respondent within 45 days. The judgment was delivered on 16th June 2023.
2. The applicant was aggrieved by the orders and has come before this Court under Rules 4 and 5(b) of the *Court of Appeal Rules*, and substantially seeks extension of time to file and serve a notice of appeal. He states that, being a layman, he did not file a notice of appeal or seek the stay of the orders following the judgment. He went to M/s Jesse Kariuki & Co. Advocates for advice. He was informed that he needed to bring the instant application. He moved with speed to file the application. He fears that if he



is not allowed to appeal the decision he will lose his 8.45 acres; that the application has been brought timeously; and that no prejudice will be suffered by the respondent.

3. The respondent was served with the application but did not file any response.
4. Learned counsel for the applicant filed written submissions in which he urged this Court to allow the application and extend time, as the intended appeal has high chances of success and that it was in the interest of justice and fairness that the Court's discretion be exercised in his favour.
5. It is trite that under Rule 4 of this *Court's Rules*, the discretion is unfettered, but has to be exercised while considering the period of delay, the reasons for the delay, the degree of prejudice to the respondent, the general fairness of the case, and, where applicable, the public importance of the case (see *Paul Wanjohi Mathenge v Duncan Gichane Mathenge* [2013]eKLR; *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others* [2014]eKLR).
6. Given that the judgment sought to be appealed against was rendered on 16th June 2023, the applicant had upto 28th June 2023 to file a notice of appeal. This application was filed on 14th July 2023. It is clear to me that the delay was less than one month. The explanation for the delay has not been controverted. It is a plausible explanation, in the circumstances. No prejudice has been claimed, if the application were to be allowed.
7. Consequently, I allow the application and grant eh applicant leave to file and serve a notice of appeal within 14 days from today. Upon the filing and serving the notice of appeal, the applicant shall within 60 days file and serve the record of appeal.
8. I make no orders as to costs.

DATED AND DELIVERED AT NYERI THIS 27TH DAY OF OCTOBER 2023

A.O. MUCHELULE

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

