



REPUBLIC OF KENYA



**Kamau & 5 others v Registrar of Companies & 10 others (Civil Application
E322 of 2023) [2023] KECA 1214 (KLR) (6 October 2023) (Ruling)**

Neutral citation: [2023] KECA 1214 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E322 OF 2023
S OLE KANTAI, JA
OCTOBER 6, 2023**

BETWEEN

**STEPHEN THIONGO KAMAU 1ST APPLICANT
AMOS KIRIA KAMUNGE 2ND APPLICANT
MWANGI MACHARIA 3RD APPLICANT
LEWIS KARIRU KIBUNGA 4TH APPLICANT
JOSEPH GACHANJA GUCHU 5TH APPLICANT
KIHURUINI INVESTMENTS LIMITED 6TH APPLICANT**

AND

**THE REGISTRAR OF COMPANIES 1ST RESPONDENT
DAVID MWANGI WAHOME 2ND RESPONDENT
PAUL WANYOIKE NGUGI 3RD RESPONDENT
GEOFFREY KIRAGU GACHANJA 4TH RESPONDENT
GEORGE MWANGI NDUNGU 5TH RESPONDENT
SIMON NJOROGE GUCHU 6TH RESPONDENT
SUSAN NYOKABI NDUNGU 7TH RESPONDENT
PHILIP W.D. KAMAU MWANGI 8TH RESPONDENT
SAMUEL KIMANI THIRU 9TH RESPONDENT
DAVID GITAU KIBIRIRI 10TH RESPONDENT
BENSON GITAU MBURU 11TH RESPONDENT**



(An application for extension of time to file Notice of Appeal from the Ruling of the High Court of Kenya at Nairobi (A. Mshila, J.) dated 23rd June, 2023 in H.C.C.C. No. E831 of 2021)

RULING

1. The applicants, Stephen Thiongo Kamau and 5 others in the Motion on notice brought under rule 4 of the Court of Appeal Rules pray in the main that time for filing Notice of Appeal against the ruling and order of the High Court of Kenya given on June 23, 2023 at Nairobi be extended to July 11, 2021 (this should be 2023); that Notice of Appeal filed on July 11, 2023 be deemed as properly filed and served and that costs of the application be in the intended appeal. In grounds in support of the Motion and in an affidavit of the 5th applicant Joseph Gachanja Guchu it is said amongst other things that the applicants failed to file notice of appeal within the prescribed time because they only became aware of the orders given on July 11, 2023 when a copy of the ruling delivered on June 23, 2023 was made available to them; that when the ruling was delivered virtually on June 23, 2023 the parties were not informed of the whole ruling but were given a summary of the same and only became aware of the substance of the ruling on July 11, 2023 and a notice of appeal was filed the same day July 11, 2023 and served on July 13, 2023; that the order the applicants seek to appeal against has crippled the day to day operations of the 6th applicant Kihuruini Investments Limited because it constrains the applicants from meeting financial obligations of the 6th defendant. Further, that delay in filing and serving notice of appeal was not deliberate but was occasioned by the fact that contents of the ruling and orders by the trial court were not availed on time. The applicants say that the intended appeal has high chances of success because the orders given effectively restrain the applicant from spending the 6th applicant's income yet the respondents had not filed any claim or counterclaim upon which such orders could be made and that the orders have the effect of crippling the 6th applicant's business.
2. Paul Wanyoiki Ngugi, the 3rd respondent in a replying affidavit says on behalf of himself and the 4th to 11th respondents that the application is unwarranted and is an abuse of the process of the court meant to delay the hearing of the suit at the High Court; that the applicants are guilty of delay; that the applicants' lawyer was in court when ruling was delivered on June 23, 2023; that:

“ ... after the ruling was delivered on June 23, 2023, the Judge indicated that the ruling would be available by Tuesday June 27, 2023 ...”;

that the applicants are not deserving of exercise of discretion; that the applicants have not demonstrated the loss they would suffer if leave is not granted; that they stand to suffer prejudice if orders sought are granted because the suit in the High Court is delayed.

3. I have seen and considered written submissions by the applicants.

The principles that apply in an application for leave to extend time are well known and were well set out in the case of *Leo Sila Mutiso v Rose Wangari Mwangi* C.A. No. Nai 255 of 1997 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”.



4. The applicants say that when ruling was delivered on June 23, 2023 the whole substance of the ruling was not read and they only became aware of the substance of the ruling when they received a copy of the same on July 11, 2023. They say that a notice of appeal was filed the same day and served on the respondents 2 days later on July 13, 2023. The respondents appear to confirm that position as the 3rd respondent says in the replying affidavit that after the ruling was delivered on June 23, 2023 the Judge indicated that the same would be available by June 27, 2023.
5. What is apparent is that the applicants, upon learning of the import of the ruling delivered on June 23, 2023 took immediate steps of appealing it through notice of appeal filed on July 11, 2023, the same day that a copy of the ruling was obtained. That notice was served on the respondents two days later. There is no delay at all on the part of the applicants. I do not see how the applicants have abused the process of the court as alleged in the replying affidavit and I am not satisfied that the respondents would be prejudiced if I exercise discretion in favour of the applicants. I am satisfied that the applicants have satisfied the principles that apply in an application of this nature. I allow the Motion dated August 1, 2023. Notice of Appeal on record is deemed as duly filed and served subject to payment of court fees if same has not been paid. Costs of the Motion will be in the appeal.

DATED AND DELIVERED AT NAIROBI THIS 6TH DAY OF OCTOBER, 2023.

S. ole KANTAI

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

