



REPUBLIC OF KENYA



KENYA LAW
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**Mavoko Land Development Company Limited v Mlolongo Catholic Church & 2 others
(Civil Application E204 of 2023) [2023] KECA 1178 (KLR) (6 October 2023) (Ruling)**

Neutral citation: [2023] KECA 1178 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E204 OF 2023
S OLE KANTAI, JA
OCTOBER 6, 2023**

BETWEEN

MAVOKO LAND DEVELOPMENT COMPANY LIMITED APPLICANT

AND

MLOLONGO CATHOLIC CHURCH 1ST RESPONDENT

FRANCIS OF ASSISI HEALTH CENTER 2ND RESPONDENT

FRANCIS OF ASSISI SECONDARY SCHOOL 3RD RESPONDENT

*(An application for extension of time to file an intended appeal from the
Judgment of the Environment and Land Court of Kenya at Machakos
(Angote, J.) dated 20th January, 2022 in ELC Cause No. 70 of 2016)*

RULING

1. The applicant Mavoko Land Development Company Limited has applied by Motion on notice under rules 4, 47, 74, 75 and 82 of the [Court of Appeal Rules](#) and all other enabling provisions of law in the main that it be granted leave to file an appeal out of time from the Judgment of Angote, J delivered on January 20, 2022; that a notice of appeal filed on January 31, 2022 be deemed as duly filed and served or, in the alternative, time for filing an appeal be extended by 30 days from the date of the order. In grounds in support of the Motion and in a supporting affidavit of the applicant's lawyer Wilfred
2. K. Babu it is said amongst other things that the lawyer was notified of delivery of Judgment on January 20, 2022; that the applicant lodged a notice of appeal on January 31, 2022 and applied for proceedings at the Environment and Land Court at Machakos and, thereafter, the Court file could not be traced until May 5, 2023 when the applicant applied for a certificate of delay. Further, that by the time certificate of delay was issued the time for filing an appeal had lapsed; that there are good grounds for appeal and that the applicant would be prejudiced if leave to appeal out of time was not granted.



3. Benjamin Karanja Kyalo, a lawyer for the 3 respondents, in a replying affidavit says that:

“... I verily believe that I am competent to swear this Affidavit as the issues raised herein are procedural in nature and the factual issues are well within my purview ...”
4. He further says that the applicant lodged notice of appeal and then went to sleep for a period of 16 months and only woke up (I am using Mr Kyalo’s language) after the respondents initiated execution proceedings for costs awarded by the trial Court; that the assertion that the Court file was lost is false and misleading as the respondents applied for and obtained a decree in April 2023; that Certificate of Delay shows that proceedings were ready for collection on March 17, 2022 but the applicant collected the same on May 9, 2023; that no reason has been given by the applicant for failure to file Memorandum of Appeal within time; that grounds of appeal raised are “... weak, frivolous and vexatious and have no probability of success at appeal”; that the application is not merited and has been brought with undue delay.
5. Wilfred Babu, the applicant’s lawyer, in a further affidavit says that the Court file could not be traced; that the respondent’s bill of costs was filed on April 24, 2023; that the Motion before me was filed as soon as the Court file in the Environment and Land Court had been traced; that the intended appeal has merit.
6. I think lawyers should remain within the confines of their professional role and should not descend to the contest where their client’s belong. I have not been told why the parties could not have deponed to the matters in contest, whether the parties could not have sworn affidavits for the lawyers to urge their clients’ cases. But let me leave that issue at that.
7. I have seen and considered written submissions by both sides.
8. The principles that apply in an application for leave to extend time under rule 4 of our rules are well known and were well captured in the oft-cited case of *Leo Sila Mutiso v Rose Wangari Mwangi CA 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”.
9. I note here that Judgment of the Environment and Land Court was delivered on January 20, 2022. A notice of appeal dated January 28, 2022 was lodged at that court on January 31, 2022. A letter bespeaking proceedings dated January 31, 2022 was lodged in that court the same day January 31, 2022. There is a Certificate of Delay dated May 9, 2023 which states *inter alia*:
 - “3. That the time taken by the court to prepare the certified copies of proceedings was from January 31, 2022 to March 17, 2022 being a total of 34 days.
 4. That I therefore certify that 34 days were taken in the preparation of the proceedings and should accordingly be excluded in computation of time ...”
10. I note that although notice of appeal was filed on time there appears to have been no follow up of the matter by the applicant. The letter bespeaking proceedings is not copied to the other side as is required



by rule 84, *Court of Appeal Rules*, 2022. Proceedings applied for by the letter dated January 31, 2022 were ready in 34 days (this means about March, 2022) but the applicant only applied for and obtained a Certificate of Delay on May 9, 2023, more than 1 year and 2 months after proceedings were ready. The applicant has not explained the delay in lodging an appeal and I am not persuaded that the court file had been missing. There is no evidence that any follow up was made by the applicant after writing the letter asking for proceedings. Where delay in lodging an appeal is not sufficiently explained I need not go into the other principles to consider in an application of this nature. The Motion has no merit and I dismiss it with costs to the respondents.

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

S. OLE KANTAI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

