



**Maruti v Michuki & 2 others (Civil Appeal (Application)
E341 of 2023) [2023] KECA 1161 (KLR) (6 October 2023) (Ruling)**

Neutral citation: [2023] KECA 1161 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) E341 OF 2023
S OLE KANTAI, JA
OCTOBER 6, 2023**

BETWEEN

EVANS SIMIYU MARUTI APPELLANT

AND

PETER MICHUKI 1ST RESPONDENT

SHARRIFF FATIYA 2ND RESPONDENT

KITALE HAULIERS LTD 3RD RESPONDENT

*(An appeal from the Judgment of the High Court of Kenya at
Makueni (Dulu, J.) dated 21st March, 2023 in HCCA No. 98 of 2019)*

RULING

1. The applicant Evans Simiyu Maruti has by Motion on notice brought under various provisions of law applied in the main that I be pleased to extend time for the applicant to file a notice of appeal out of time; that I grant leave to the applicant to lodge an appeal out of time against the decision delivered on March 21, 2023 by Dulu, J., in Makueni HCCA No 98 of 2019; that the annexed notice of appeal be deemed as duly filed and that costs of the application be provided for. In grounds in support of the Motion and in a supporting affidavit by the applicant's lawyer Edinnah Arati it is said amongst other things that in the said Judgment the Judge declined to award compensation despite finding evidence of service upon the 3rd respondent; that at the time of delivery of Judgment the applicant, who is an amputee as a result of a traffic road accident who resides in Kitale was unable to travel to Nairobi to peruse the Judgment; that the applicant was notified of the Judgment in April 2023 and wishes to appeal; that there is no inordinate delay and reason for delay is genuine and was beyond the applicant's control and that the intended appeal has high chances of success. It is further stated that at the time of delivery of the Judgment the Judge was on transfer and there was movement of the Court file from



one station to another therefore the lawyers were not able to peruse the Judgment on time leading to a lapse of time.

2. I note that the Registrar of this Court served a hearing notice on lawyers for both sides on September 13, 2023 at 2.26 p.m. requiring that written submissions be filed within specified time. I have not seen either a replying affidavit or written submissions by the respondents.

3. The factors to consider in an application of this nature are old hat and were well summarized in a ruling by a single Judge which was confirmed by a full bench in the case of *Leo Sila Mutiso v Rose Wangari Mwangi* Civil Application No NAI 255 Of 1997. In the case of *Maina Jobana Miano v Leah Wanyara Gichohi* [2019] eKLR Koome, JA (as she then was – now Chief Justice) cited the case of *Issa Masudi Mwabumba v Alice Kavenya Mutunga & 4 others* [2012] eKLR and said:

“...The principles to guide the court on the exercise of judicial discretion to extend time or to revive a suit are similar and they have been articulated in a long line of authorities. See the case of *Leo Sila Mutiso vs Rose*, CA NAI 255 of 1997 (unreported) ... Besides the principles set out in the case of *Leo (supra)*, I am also guided by the provisions of Section 3A and 3B of the *Appellate jurisdiction Act* otherwise known as the oxygen principle. Stemming from the overarching objectives in the administration of justice the goal at the end of the day, the court attains justice and fairness in the circumstances of each case. This is the same spirit that is envisaged as the thread that kneads through the *Constitution* of Kenya, 2010 in Article 159.”

4. I note that Judgment intended to be appealed was delivered on March 21, 2023 and the Motion before me is dated May 18, 2023, less than 2 months after Judgment was delivered. The applicant says that he is based in Kitale and was not able to travel to Nairobi, or is it Makueni, when Judgment was delivered. I am told by the applicant that the Judge was on transfer from Makueni to Voi and that there was movement of the Court file from one station to the other leading to a delay in the lawyers perusing the Judgment. There is no inordinate delay and I am satisfied that the explanation for delay is reasonable. On chances of the intended appeal succeeding this is not immediately obvious considering that this would be a second appeal from the Judgment of the High Court sitting on first appeal. But this is not a major consideration in an application like this one.

5. I allow this Motion. Let Notice of Appeal be lodged within fourteen days of today. Costs of the Motion will be in the appeal.

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

