



Muiruri t/a Liberal Majestic Assets International v Kahiu & another (Civil Appeal (Application) E387 of 2023) [2023] KECA 1202 (KLR) (6 October 2023) (Ruling)

Neutral citation: [2023] KECA 1202 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) E387 OF 2023
S OLE KANTAI, JA
OCTOBER 6, 2023**

BETWEEN

**JOHN MBUGUA MUIRURI T/A LIBERAL MAJESTIC ASSETS
INTERNATIONAL APPELLANT**

AND

**JACOB KAMAU KAHIU 1ST RESPONDENT
Q-CIKU INVESTMENTS 2ND RESPONDENT**

*(Being an appeal from the Judgment of the High Court of Kenya at
Nairobi (Aleem, J.) dated 20th April, 2023 in H.C.C.C. No. E122 of 2022)*

RULING

1. The applicant, John Mbugua Muiruri who trades as Liberal Majestic Assets International has by motion on notice brought under various provisions of law applied in the main that I be pleased to grant him leave to appeal out of time against the judgment of Aleem Visram, J, delivered on April 20, 2023 and that notice of appeal be deemed as duly filed. In grounds in support of the motion and in his supporting affidavit he says that the appeal has high chances of success; that delay in filing appeal was inadvertent and excusable "... due to the problem with typing of the proceedings of which (sic) the appellant is a lay man and is not well vast (sic) with procedure"; that memorandum of appeal is ready awaiting to be filed if leave is granted and that the respondent would not be prejudiced if I grant leave. Further, that he was the plaintiff in HCCA E122 of 2022 (probably appellant) where he acted in person without benefit of counsel; that when he requested for proceedings to enable him appeal they were delayed and that he is able and ready to abide any conditions I may impose. He has attached to the affidavit an undated and unlodged notice of appeal; a letter dated May 24, 2023 to the High Court of Kenya, Nairobi requesting for proceedings (it is not copied to the other side as required) and a copy of the judgment intended to be appealed.



2. In written submissions the applicant gives a history of facts of the case and relies on the case of *Stanley Kangethe Kinyanjui v Tony Ketter & others* [2013] eKLR for the proposition that if I don't grant leave he will be denied the right to be heard and will suffer substantial loss if the application is not allowed. He says that there are good and sufficient reasons why discretion should be exercised in his favour.

3. M/S Githui & Partners, Advocates for the respondents in written submissions dated September 18, 2023 rely on the case of *Leo Sila Mutiso v Rose Wangari Mwangi* civil application No Nai 255 of 1997 where this court stated:

“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. The respondents say that a notice of appeal should have been filed on time and failure to do so, according to the respondents:

“... is a fatal mistake that cannot be cured in law ...”

4. The applicant is accused of using ignorance of the law as an advantage; that he has not filed a memorandum of appeal and I am asked to dismiss the application.

5. The applicant before me is unrepresented and he has deponed that he acted in person at the High Court. Judgment intended to be appealed was delivered on April 20, 2023 and I note that the motion is dated June 2, 2023, less than 6 weeks after judgment was delivered. The applicant went to the extent of filing notice of appeal to challenge the judgment of the High Court. I do not agree with the position taken by the respondent that the applicant was not vigilant in the matter. I do not agree that failure to lodge notice of appeal on time is fatal at all. rule 4, the *Court of Appeal Rules, 2022* donates to me a discretion to consider the circumstances obtaining to an applicant and I make an appropriate decision. The applicant pursued the matter from the beginning. There is no inordinate delay at all.

6. I will not comment on whether the intended appeal has high chances of success; I note that this would be a second appeal from the judgment of the High Court sitting on a first appeal.

7. I am entitled to exercise my discretion in favour of the applicant. I allow the motion dated June 2, 2023 by extending the time for lodging the same. I deem the notice of appeal as duly filed ad served subject to payment of appropriate court fees if the same has not been paid. Let the applicant file record of appeal within thirty 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

