



**Angweye v Mulemi (Environment & Land Case E007 of 2022)
[2025] KEELC 901 (KLR) (26 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 901 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT & LAND CASE E007 OF 2022
A NYUKURI, J
FEBRUARY 26, 2025**

BETWEEN

ZEPHANIA NGAIRA ANGWEYE PLAINTIFF

AND

RODGERS SENAJI MULEMI PLAINTIFF

RULING

Introduction

1. Before court is a Notice of Motion dated 7th May, 2024 filed by the defendant seeking orders that leave be granted to the defendant to file supplementary affidavit together with written submissions in respect to his application dated 18th December, 2023 out of time and that the said documents attached to the supporting affidavit be deemed as duly filed. He also sought costs.
2. The application is premised on the grounds on its face and the affidavit sworn by the defendant and dated 7th May, 2024. The applicant's case is that he was previously represented by the firm of Gichaba Ondieki Advocates who filed application dated 18th December, 2023 seeking stay of execution pending appeal and were granted 14 days to file further affidavit and submissions. That subsequently he changed legal representation, only to realize that his former advocate had not filed further affidavit and submissions within the time frame given by court. That his advocate was served with response to the application a day to the hearing date.
3. He blamed the court for delay in issuance of typed proceedings to enable his new counsel prepare grounds of appeal. He argued that it will be fair and in the interests of justice if his prayer is granted. He attached the affidavit and submissions.
4. The application is opposed. The plaintiff swore a replying affidavit dated 11th June, 2024. He stated that it was not correct that he served his response a day to the hearing date as service was done on 17th January, 2024. He stated that the hearing of the application had been adjourned twice but the



applicant failed to file further affidavit and submissions. He argued that it was now about 10 months after delivery of judgment and no appeal had been lodged, hence the application herein is a mere delay tactic to prevent the respondent from enjoying fruits of the judgment.

5. The respondent further contended that the applicant continues to receive rent from the suit property and the adjacent property owned by the respondent and hence delay in the prosecution of the application has prejudiced his interest. He stated that the draft supplementary affidavit showed that the applicant had introduced new evidence instead of responding to the replying affidavit, prejudicing him. That the introduction of a Memorandum of Appeal is an afterthought and that he will be prejudiced if the same is admitted. He maintained that lack of typed proceedings could not be the basis for failure to file Memorandum of appeal. He contended that the defendant had failed to present justification for delay in filing his documents and that he had also failed to demonstrate diligence.
6. Parties were directed to file written submissions in disposing the application. On record are the respondent's submissions which this court has duly considered.

Analysis and Determination

7. The court has carefully considered the application, response and submissions. The only issue for this court's determination is whether the applicant has met the threshold for orders for extension of time.
8. Order 50 Rule 6 of the [Civil Procedure Rules](#) grants this court power to extend time and provides as follows;

Where a limited time has been fixed for doing any act or taking any proceedings under these rules, or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed;

Provided that the costs of any application to extend such time and of any order made thereon shall be borne by the parties making such application, unless the court orders otherwise.

9. In the case of [Nicholas Kiptoo Arap Korir Salat –vs- Independent Electoral and Boundaries Commission & 7 Others](#) (2014) e KLR, the Supreme Court of Kenya stated principles that govern the court's discretion in an application for extension of time as follows;
 1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court;
 2. A party who seeks for extension of time has the burden of laying the basis to the satisfaction of the court.
 3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
 4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
 5. Whether there will be any prejudice suffered by the respondents if the extension is granted;
 6. Whether the application has been brought without undue delay; and
 7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”



10. The court has considered the application and the response, and it is clear that the defendant was granted leave of 14 days to comply on 6th February, 2024. Therefore, time lapsed on 20th February, 2024. The application herein was made on 8th May, 2024, which is two months and 18 days after expiration of the time granted by court. The reason given for the delay is that there was change in legal representation which resulted in the delay, and that the court failed to supply the new advocate with proceedings on time to prepare and a draft Memorandum of appeal. I have considered the length of the day and the basis for the delay and in my view, I find and hold that since the defendant's new advocate needed time to familiarize with the matter and file the necessary documents besides obtaining proceedings, the delay herein is not inordinate and the reason given is apparent. The plaintiff's argument that the draft memorandum of appeal shall be new evidence and will prejudice him is untenable as he has not demonstrated how he will be prejudiced, because should he need to respond to the same, he can seek leave to respond to do so. In my view, the delay has been duly explained and orders sought ought to be granted in the interests of justice. However, as the defendant's change of advocate is the major reason for the delay and in view of the provisions of the proviso to Order 50 Rule 6 of the Civil Procedure Rules, the defendant shall bear the costs of the application.
11. In the result, I find and hold that the application dated 7th May, 2024 is merited and the same is allowed as follows;
 - a. The defendant is granted leave of 14 days to file and serve his supplementary affidavit together with submissions in regard to the application dated 18th December, 2023.
 - b. Costs of the application herein shall be borne by the defendant.
12. It is so ordered.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 26TH DAY OF FEBRUARY, 2025
THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM**

A. NYUKURI

JUDGE

In the presence of;

Ms. Owiti holding brief for Mr. Munyambu for the respondent

Ms. Kadenyi holding brief for Mr. Amasakha for the applicant

Court Assistant: M. Nguyai

