



REPUBLIC OF KENYA



KENYA LAW
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**Raghvani v Kirigia (Civil Appeal (Application) E374 of 2023)
[2023] KECA 1203 (KLR) (6 October 2023) (Ruling)**

Neutral citation: [2023] KECA 1203 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) E374 OF 2023
S OLE KANTAI, JA
OCTOBER 6, 2023**

BETWEEN

MAVJI HARJI RAGHVANI APPELLANT

AND

FRANKLINE KARIUKI KIRIGIA RESPONDENT

(An application for leave to admit appeal out of time from the Judgment of the High Court of Kenya at Nairobi (Komingoi, J.) dated 14th July, 2022 in ELC No. 115 of 2016)

RULING

1. The applicant Mavji Harji Raghvani has by Motion on notice applied under rule 4 of The Court of Appeal Rules, 2023 in the main that I be pleased to admit the appeal out of time and the same be deemed as properly filed. In grounds in support of the Motion and in a supporting affidavit by the applicant it is said amongst other things that Judgment was delivered on July 14, 2022 in favour of the respondent; that the applicant is aggrieved by that Judgment and has appealed but that the time allowed to appeal has lapsed and that the delay in bringing the application is not inordinate. Further, that a notice of appeal was filed dated July 19, 2022; copies of proceedings and Judgment were applied for on July 28, 2022 but the same were delayed and supplied when time for filing appeal had run out.
2. I note that parties' advocates were served with a hearing notice on September 13, 2023 at 2.27 p.m. requiring them to *inter alia* file written submissions within specified time. I have not seen any written submissions by either side.
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 Johana 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.”

The position here is that Judgment to be appealed was delivered on July 14, 2022. A Notice of Appeal dated July 19, 2022 was lodged with the Registrar of the Environment and Land Court at Milimani on July 27, 2022 which was within the time stated in the rules for lodging a notice of appeal. Proceedings were applied for by letter dated July 28, 2022 which letter was copied to advocates on the other side. I have seen a Certificate of Delay issued on May 9, 2023 by the Deputy Registrar, Environment and Land Court, Milimani, certifying that 249 days were taken in typing out proceedings by that Court.

4. I am satisfied that there is no inordinate delay by the applicant who was vigilant all along in pursuing an appeal. The applicant is not entitled to my exercise of discretion in his favour and I allow the Motion dated May 20, 2023. I admit Record of Appeal which has already been filed as Civil Appeal No E374 of 2023. 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

