



REPUBLIC OF KENYA



KENYA LAW
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**PKM v FN (Civil Appeal (Application) E091 of 2023)
[2023] KECA 1635 (KLR) (17 November 2023) (Ruling)**

Neutral citation: [2023] KECA 1635 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPEAL (APPLICATION) E091 OF 2023
AO MUCHELULE, JA
NOVEMBER 17, 2023**

BETWEEN

PKM APPLICANT

AND

FN RESPONDENT

(An application for extension of time to file and serve a Notice of Appeal and a Memorandum of Appeal against the judgment of the High Court of Kenya at Meru (Wamae T.W. Cherere, J.) dated 19th May 2022 in HCC. No. 21 of 2019 (OS))

RULING

1. The applicant, PKM , and the respondent, FN were husband and wife. The respondent filed an originating summons at the High Court at Meru seeking the determination of their matrimonial property. The dispute was heard, and on 19th May 2022 a determination was made by the learned Wamae T.W. Cherere, J. that properties Nkuene/Taita/xxx and Nkuene/Taita/xxx had been acquired and developed during their marriage, and that the couple had equally contributed to their acquisition and development; and that the properties would be valued to enable their sharing.
2. The applicant was aggrieved and instructed an advocate Brenda Karimi Gikundi to appeal to this Court. Counsel filed a notice of appeal dated 10th June 2022. Under Rule 77(2) of the [Court of Appeal Rules](#), the notice was supposed to be filed within fourteen (14) days from the date of the judgment that was intended to be appealed against. The notice was filed late by 8 days. Counsel states:-
 - “ 4) That due to my inept and being the first time being instructed to file an appeal in the Court of Appeal, I failed to properly advise my client on the Court of Appeal Rules with regards to filing the notice and record of appeal.”



3. The applicant stated:-

“ 4) That my advocate’s failure to advise me properly, the Notice of Appeal was filed in court lodged in court outside the pre- requisite 14 days of appeal.

5) That my advocate is young and is on a learning curve therefore her mistake was that she thought that to appeal the decision, she had 30 days to file Notice of Appeal.”

4. I do not want to say that young advocates do not begin their practice at the Court of Appeal. Even where they do, basic diligence would require that they consult their seniors in practice, if they cannot, for whatever reason, access and read the [Court of Appeal Rules](#) to familiarise themselves with the practice and procedure of the Court when seeking to appeal decisions of the courts below.

5. Nonetheless, I would have been prepared to forgive the explanation that led to the delay of eight (8) days. But what followed was not excusable. The present application to extend time to deem the notice of appeal as being properly filed to extend time for the filing of the record of appeal was filed on 17th May 2023, about one year later. The applicant states that after realising the mistake of the young advocate, he instructed his present advocates who filed the instant application. He states that he has an appeal with reasonable grounds, as can be seen from the annexed Draft Memorandum of Appeal. His case is that he will suffer irreparably if he is not allowed to appeal.

6. There is no indication regarding when the young advocate discovered her mistake, or when the applicant realised that the advocate had misled him. He does not say when it is that he instructed the present advocates. A party who seeks the exercise of this Court’s discretion in his favour has to be candid and forthcoming. He has to place before the Court all the relevant information. For instance, now that the applicant is seeking to appeal, it would have been relevant for him to indicate whether he has since obtained a certified copy of proceedings and judgment from the High Court, and that he has prepared the record of appeal. I say these because, Rule 84 of the [Court of Appeal Rules](#) requires that the record of appeal be filed within 60 days following the notice of appeal.

7. This application was not defended, although served on the respondent. This, however, does not absolve the applicant from demonstrating that the delay in bringing the application was not long or inordinate, and to offer reasonable and plausible reasons for the delay (See *Leo Sila Mutiso –v- Rose Hellen Wangare Mwangi*, Civil Application No. NBI 255 of 1997).

8. Even as the applicant asks that the mistakes of his advocate should not be visited on him, and cites the decision in [Vishva Stone Suppliers Company Limited –v- RSR Stone \[2006\] Limited](#) [2020]eKLR in support of his contention, it is borne in mind that each case depends on its peculiar facts and that it is important that an applicant who is blaming his advocate for delay or failure to instruct properly, has himself to show that he exhibited the basic diligence of a reasonable person who wished to appeal the decision that aggrieved him and showed the desire by visiting the advocate regularly to be appraised of the steps being taken to appeal. This is because, the [Constitution](#), the [Appellate Jurisdiction Act](#) and the Court of Appeal Rules all demand that Court matters be expeditiously processed.

9. In the circumstances of this case, I decline to extend time. The application is consequently dismissed.

DATED AND DELIVERED AT NYERI THIS 17TH DAY OF NOVEMBER 2023.

A.O. MUCHELULE

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR

