



**Vodot v Kipkwon & another (Civil Application E025 of 2022)
[2023] KECA 1353 (KLR) (10 November 2023) (Ruling)**

Neutral citation: [2023] KECA 1353 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT ELDORET
CIVIL APPLICATION E025 OF 2022
FA OCHIENG, JA
NOVEMBER 10, 2023**

BETWEEN

HESBON GAVIHI VODOT APPLICANT

AND

PAUL K KIPKWON 1ST RESPONDENT

THOMAS KIPROP 2ND RESPONDENT

(An application for extension of time within which to file a Notice of Appeal and Record of Appeal from the judgment of the Environment and Land Court at Eldoret (A. Ombwayo, J.) delivered on 21st December, 2018 in ELC Case No. 139 of 2013)

RULING

1. Before me is an application dated August 26, 2022, which sought an extension of time to file and serve a Notice of Appeal and Record of Appeal out of time. The intended appeal arose from a judgment that was delivered on December 21, 2018.
2. The application was supported by an affidavit sworn by the applicant. At paragraph 2 of his Affidavit, the applicant deponed thus;

“That I instructed the firm of Mwinamo Lugonzo & Company Advocates, in conduct of the matter at the trial court, to lodge an appeal should an adverse Judgment be delivered in ELC No 139 of 2013, but the same was not done.”
3. He faults the advocate for failing to lodge the notice of appeal. He also said that the advocate neither requested for typed proceedings nor informed him about the delivery of the judgment, notwithstanding the fact that he visited the offices of the said advocate, severally.



4. On May 19, 2022, the applicant personally went to the trial court; and it was then that he was made aware that judgment had been delivered on December 21, 2018.
5. It is the applicant's case that the failure to lodge a notice of appeal was caused by factors beyond his control, as his advocate failed to notify him of the delivery of the judgment.
6. The application was canvassed by way of Written Submissions.
In his submissions, the applicant stated that judgment was delivered without notice to him.
7. He also said that the delay in bringing the application was not inordinate. A delay of 4 years, if not satisfactorily explained, is doubtlessly inordinate.
8. In this instance, the applicant has not provided the court with information concerning the dates when he allegedly visited his advocates, or the results of any such visits.
9. The applicant submitted thus;
 - “ 11. The applicants therefore submit that from the above case law, it is evidence that where there is failure to serve notice of delivery of judgment upon the applicants and/or their advocates, which is the case herein, the same amounts to sufficient reason, for the purposes of exercising the discretionary powers of leave to appeal out of time.”
10. The applicant is well aware that service may be effected either on him or his advocate. There is no requirement that a party who is represented by an advocate should also be served.
11. In this case the applicant has blamed his advocate for professional negligence or professional lapse, in failing;
 - “ ... to take up my matter and properly advise me as their client.”
12. In my understanding, such an indictment of the advocate would only arise when the client was aware that the advocate had everything which was required for him to take appropriate action, but he then defaulted.
13. If the advocate was not served with a notice of the delivery of the judgment, he could not be described as being guilty of professional negligence or professional lapse. Indeed, if the advocate did not have prior notice of the date when the judgment would be delivered, I would have expected him to swear an Affidavit to so indicate. And if the advocate never had notice, there would have been no reason for the applicant to assign blame to him, as he has done.
14. In a nutshell, I find that the delay herein is inordinate, and that the applicant had failed to provide the court with a satisfactory and plausible explanation which could have enabled the court to exercise its discretion in his favour.
15. In the result, the application dated August 26, 2022 is dismissed, for lack of merit.

DATED AND DELIVERED AT NAKURU THIS 10TH DAY OF NOVEMBER, 2023.

F. OCHIENG

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JUDGE OF APPEAL



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

DEPUTY REGISTRAR

