



REPUBLIC OF KENYA



KENYA LAW
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**Mwangi v Gitau (Civil Application E425 of 2021)
[2022] KECA 378 (KLR) (25 February 2022) (Ruling)**

Neutral citation: [2022] KECA 378 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E425 OF 2021
S OLE KANTAI, JA
FEBRUARY 25, 2022**

BETWEEN

ESTHER WACHEKE MWANGI APPLICANT

AND

JOSEPH MBAU GITAU RESPONDENT

(Being an application for extension of time from the Judgment of the Environment and Land Court of Kenya at Nairobi (E.O. Obaga, J.) dated 29th October, 2020 in E.L.C. Case No. 586 of 2008)

RULING

1. In the Motion brought under Sections 3A and 3B of the [Appellate Jurisdiction Act](#) and rule 4 of the [Court of Appeal Rules](#) I am asked in the main to extend time for filing notice of appeal and record of appeal out of time from the Judgment of the Environment and Land Court (“ELC”) delivered on 29th October, 2020. In grounds in support of the application and in a supporting affidavit of the applicant Esther Wacheke Mwangi it is stated amongst other things that the lawyer then on record failed to attend court when Judgment was delivered (29th October, 2020); that the applicant was not notified of delivery of that Judgment until 17th November, 2020; she then instructed another law firm which moved the ELC to be allowed to come on record for the applicant and for leave to file notice of appeal out of time; a ruling was delivered on 28th October, 2021 where the application was not allowed. The applicant says, in addition, that she is aggrieved by the said Judgment and desires to appeal; that the delay in not filing notice of appeal is not inordinate; she blames her former lawyers for not taking appropriate steps to file an appeal.
2. I have not seen any replying affidavit by the respondent and I note that a Hearing Notice was served by the Deputy Registrar by email on 31st January, 2022 to “[Particulars Withheld]advocate@gmail.com, [Particulars Withheld]advocates.com, [Particulars Withheld]advocates.co.ke, [Particulars Withheld]@gmail.com;



[Particulars Withheld]advocates@gmail.com”. That hearing notice informed the parties of the hearing date and parties were required to file written submission within time specified.

I have seen written submissions filed for the applicant which I have perused and considered.

3. The principles that govern consideration of applications for extension of time were well set out in the decision of a single Judge as affirmed by the full bench in the case of *Fakir Mohamed v Joseph Mugambi & 2 Others* Civil Application No. 332 of 2004 as follows:

“The exercise of this Court’s discretion under Rule 4 has followed a well-beaten path since the stricture of “sufficient reason” was removed by amendment in 1985. As it is unfettered, there is no limit to the number of factors the court would consider so long as they are relevant. The period of delay, the reason for the delay (possibly) the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted, the effect of the delay on public administration, the importance of compliance with time limits, the resources of the parties, whether the matter raises issues of public importance – are all relevant but not exhaustive factors: See *Mutiso v Mwangi*, Civil Application No. NAI. 255 of 1997 (ur), *Mwangi v Kenya Airways Limited* [2003] KLR 496, *Major Joseph Mwereri Igweta v Murika Methare & Attorney General* Civil Application No. NAI 8 of 2000 (ur) and *Murai v Wainaina* (No. 4) 1982 KLR 38.”

4. The applicant here says that she had lawyers on record who did not attend court and did not inform her that Judgment had been delivered until 20 days had elapsed. One of the annexures to the application is a letter dated 17th November, 2020 addressed to the applicant by M/S Muttisya & Company Advocates which informs the applicant that Judgment had been delivered and that an appeal should be lodged. The letter indicates “Advance copy by Email” but no email address is provided. I note that Judgment was delivered on 29th October, 2020 and the said letter is dated 17th November, 2020 by which time the time contemplated for lodging a notice of appeal had elapsed.
5. The applicant says that she was frustrated by her former lawyers who did not give her necessary information on the case in court. She further says that as soon as she found out that Judgment had been delivered she appointed another law firm to pursue an appeal on her behalf.

I have seen draft Memorandum of Appeal attached to the application and I think there are arguable points in the intended appeal.

6. The applicant has satisfied me on the relevant principles to be applied in an application of this nature and I exercise my discretion in her favour. Let the applicant file Notice of Appeal within 14 days of today and Record of Appeal within 30 days thereafter. I make no order on costs.

DATED AND DELIVERED AT NAIROBI THIS 25TH DAY OF FEBRUARY, 2022.

S. ole KANTAI

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

