



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Kiptarus v Lowland Service Organization (Civil Application
16 of 2021) [2022] KECA 132 (KLR) (18 February 2022) (Ruling)**

Neutral citation: [2022] KECA 132 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT ELDORET
CIVIL APPLICATION 16 OF 2021
DK MUSINGA, JA
FEBRUARY 18, 2022**

BETWEEN

ABRAHAM KIPTOO KIPTARUS APPLICANT

AND

LOWLAND SERVICE ORGANIZATION RESPONDENT

*(An application for extension of time to file an appeal out of time in an
intended appeal against the Judgment of the High Court of Kenya at Eldoret
(E. N. Maina, J) dated 5th February 2020 in Civil Appeal No. 6 of 2018)*

RULING

1. Before me is a notice of motion dated 1st March 2021 brought under Rule 4 of the *Court of Appeal Rules, 2010* and all other enabling provisions of the law substantively seeking an order granting leave to the applicant to file his appeal out of time against the judgment of Maina, J. delivered on 5th February 2020.
2. The application is premised on the grounds that upon delivery of judgment by the trial court, the applicant instructed his advocate to file an appeal before this Court against the whole of the decision of the trial court. That the advocate vide a letter dated 6th February 2020 wrote to the Deputy Registrar of the trial court requesting for certified copies of proceedings and judgment. That a notice of appeal dated 12th February 2020 was lodged before the trial court on 25th February 2020.
3. According to the affidavit sworn by the applicant in support of this application, certified copies of the proceedings and judgment have never been supplied to his advocate by the trial court. This was the reason for the delay in instituting the appeal.
4. The applicant believes that she has a meritorious appeal, and has filed a draft memorandum of appeal which sets out 7 grounds of appeal. The applicant further argues that it is in the interest of justice that



he be given an opportunity to pursue the intended appeal so that substantive justice is achieved and that the respondent will not suffer any prejudice if the orders sought are granted.

5. The application was not opposed as there was no response from any of the respondents. Both parties did not file any written submissions.
6. Before the matter came up for hearing on 6th May 2021, the firm of Bundotich Korir & Co. Advocates filed a Notice of Change of Advocates dated 28th April 2021. The notice indicated that the appellant had appointed the firm of Bundotich Korir & Co. Advocates to represent him in place of the firm of Ngigi Mbugua & Co. Advocates. On the same date, the firm of Bundotich Korir & Co. Advocates filed a Notice of Withdrawal of Application dated 28th April 2021. As per this notice, the applicant herein was withdrawing the notice of motion dated 1st March 2021 wholly.
7. Rule 52 of the Rules of this Court contains the provisions regarding withdrawal of applications before this Court. The Rule reads as follows:

52. "Application for leave to withdraw
An applicant may at any time apply to the Court for leave to withdraw the application and such application may be made informally."
8. Taking into consideration the notice of withdrawal of application dated 28th April 2021 and also bearing in mind that the application was not opposed by the respondent, I am inclined to grant leave for the withdrawal of the entire application. Accordingly, the notice of motion dated 1st March 2021 is withdrawn under Rule 52 with no orders as to costs.

DATED AND DELIVERED AT NAIROBI THIS 18TH DAY OF FEBRUARY, 2022.

D. K. MUSINGA, (P)

.....

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

