



REPUBLIC OF KENYA



KENYA LAW
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**Kenya Magistrates & Judges Association v Turinga & 2 others (Civil Appeal
(Application) E051 of 2021) [2022] KECA 457 (KLR) (18 March 2022) (Ruling)**

Neutral citation: [2022] KECA 457 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) E051 OF 2021
K M'INOTI, JA
MARCH 18, 2022**

BETWEEN

KENYA MAGISTRATES & JUDGES ASSOCIATION APPLICANT

AND

KEVIN TURINGA 1ST RESPONDENT

REGISTRAR OF SOCIETIES 2ND RESPONDENT

KENYA JUDGES WELFARE ASSOCIATION 3RD RESPONDENT

*(Application for extension of time to file Memorandum and Record of Appeal
from the Judgement and Decree of the High Court of Kenya at Nairobi (Sergon,
Mutuku & Njuguna, JJ.) date 24th May 2019 in Const. Pet. No. 442 of 2015)*

RULING

1. The applicant's Motion dated 18th February 2021 is taken out under rule 4 of the Court of Appeal Rules and prays for extension of time to enable the applicant file its memorandum and record of appeal out of time in an intended appeal from the Judgement and Decree of the High Court of Kenya at Nairobi dated 24th May 2019. The application is supported by an affidavit sworn on the same day by the applicant's advocate, Mr. Elisha Zebedee Ongoya.
2. Counsel has deposed that after the judgment on 24th May 2019, the applicant instructed him to lodge an appeal and that, on 7th June 2019, he filed a notice of appeal and applied to the Registrar for certified copies of the judgment and proceedings. Counsel further deposes that he received the certified copies on 12th October 2020. Unfortunately, shortly thereafter, on 30th October 2020, his home was gutted down by fire, which forced him to take three months leave from the office to resettle his family. He resumed in February 2021, by which time he was already late in filing the record of appeal.



3. The applicant recites the above facts in its written submission to support of the application and adds that the delay is not inordinate and that it is fully explained by the tragic events that befell its counsel. The applicant also submits that the intended appeal is not frivolous and raises important questions that this Court should determine.
4. The respondents did not file any affidavit or grounds of opposition or even written submission to contest the application. Accordingly, I will treat the motion as unopposed.
5. I have carefully considered the application. The discretion of the Court to extend time is wide and unfettered, subject only to the caveat that the discretion should be exercised judiciously rather than capriciously. The considerations that guide the Court have been settled in decisions such as *Leo Sila Mutiso v. Rose Hellen Wangari Mwangi, Civil Application No. Nai. 255 of 1997* and *Fakir Mohamed v. Joseph Mugambi & 2 Others, CA No. Nai. 332 of 2004*, and include, among others, the length of delay, the reason for the delay, the chances of the appeal succeeding if the application is granted, and the degree of prejudice to the respondent if the application is granted.
6. By dint of Rule 82(1) of the *Court of Appeal Rules*, the applicant had sixty days from 12th October 2020 when it received the certified copies of the judgment and proceedings, to file the record of appeal. That means the record of appeal should have been filed on or before 11th December 2020.

The applicant has explained that the tragic events of 30th October 2020 resulting in the burning down of its counsel's home and counsel having to take leave to resettle his family occasioned the delay in filing the record of appeal. Counsel was away from office for three months until February 2021. The application for extension of time was made on 18th February. In the circumstances, I am satisfied that the delay is not inordinate and in any event, it is candidly and truthfully explained. As was stated in *Aviation Cargo Support Ltd. v. St. Marks Freight Services Ltd (2014) e KLR*, in the normal vicissitudes of life, deadlines will be missed even by those who are knowledgeable and zealous and the courts are not blind to that fact.

7. I am also satisfied that the intended appeal is not frivolous and that the respondents will suffer no prejudice, otherwise they would have come forward to demonstrate the prejudice. Accordingly, I allow this application and direct the applicant to file and serve the memorandum and record of appeal within twenty-one (21) days from the date of this ruling. Costs of the application will abide the outcome of the appeal. It is so ordered.

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

K. M'INOTI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

