



**Lecchini v Attorney General & another (Civil Appeal (Application)
E584 of 2021) [2022] KECA 458 (KLR) (18 March 2022) (Ruling)**

Neutral citation: [2022] KECA 458 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) E584 OF 2021
K M'INOTI, JA
MARCH 18, 2022**

BETWEEN

MARK LECCHINI APPLICANT

AND

ATTORNEY GENERAL 1ST RESPONDENT

REGISTRAR OF TITLES 2ND RESPONDENT

(Application to deem Record of Appeal and Supplementary Record of Appeal to have been filed on time from the Judgment and Decree of the Environment and Land Court at Nairobi (Okong'o, J.) dated 25th February 2021 in ELC No. 329 of 2011)

RULING

1. In the application before me, the applicant, Mark Lecchini, seeks an order, pursuant to rule 4 of the Court of Appeal Rules, to deem his record and supplementary record of appeal, filed respectively on 7th October 2021 and 25th October 2021, to have been filed on time. The judgement of the Environment and Land Court that the applicant intends to appeal was delivered on 25th February 2021. The applicant lodged a notice of appeal on 10th March 2021, which is within 14 days from the date of the judgment, as required by rule 75(2) of the *Court of Appeal Rules*.
2. On the same day, the applicant's advocates applied for certified copies of the judgment and proceedings and copied the letter of application to the Attorney General, which again was within 30 days of the date of the judgment of the Environment and Land Court, as required by rule 82(1) of the Court of Appeal Rules. In the affidavit in support of the application, the applicant's advocates depose that they were verbally notified by the Registrar that the certified copies of the judgment and proceedings were ready for collection on 9th August 2021 and that they collected the same on 10th August 2021 and filed the record of appeal on 7th October 2021, which was within 60 days of notification that the proceedings were ready, as required by rule 82(1).



3. The applicant's advocates further depose that when the court issued a certificate of delay, it indicated that they were notified that the proceedings were ready for collection on 5th August 2021, which would mean that the record of appeal was filed three days out of time. They have annexed correspondence between them and the Registrar, where the dispute is whether they were verbally notified that the documents were ready for collection on 5th or on 9th August 2021. It appears to be common ground that whatever date the communication was made, it was verbal rather than in writing.
4. In his written submissions in support of the application, the applicant reiterated the above factual background and added that there was genuine confusion as to the date of verbal notification and that in any event, a delay of three days is not inordinate or unreasonable. They relied on the ruling in *Metropolitan Cannon General Insurance Co Ltd v. Elgon Kenya Ltd, Civil Application No. E413 of 2021* on the principles that guide the Court in determining an application for extension of time.
5. The respondents did not file any grounds of opposition, replying affidavit, or submissions and therefore I must treat the averments by the applicant as uncontested or uncontroverted. Under rule 4 the Court has wide and unfettered discretion to extend time, subject to the caveat that the discretion must be exercised judiciously. In *Leo Sila Mutiso v. Rose Hellen Wangari Mwangi, Civil Application No. Nai. 255 of 1997*, the considerations that guide the Court in exercising the discretion in an application for extension of time were stated thus:

“It is now settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general, the matters which this Court takes into account in deciding whether to grant an extension of time are, first, the length of delay; secondly, the reason for the delay; thirdly (possibly), the chances of the appeal succeeding if the application is granted and fourthly; the degree of prejudice to the respondent if the application is granted”.
6. In the instant application, if I agree with computation of time by the Registrar and his assertion that notification to the applicant that the proceedings were ready for collection was made on 5th August 2021, the length of delay is only three days, which cannot be described as inordinate or unreasonable. The delay has been satisfactorily explained as arising from the uncertainty regarding the date of the oral communication that the proceedings were ready for collection. Whatever the date of the oral communication, I believe from the evidence on record that the applicant's advocates honestly believed that the communication was made on 9th August 2021. Moving forward, it would be good practice for the Registrar to communicate to parties in writing or electronically, to obviate these kinds of disputes and applications.
7. As regards the other considerations, I have no reason to describe the intended appeal as frivolous; it is clear that it involves a parcel of land whose value is not insignificant. Lastly, it behoved the respondents to demonstrate any prejudice that they stand to suffer if the application is granted. As I have indicated none of the respondents has come forth to oppose the application.
8. In the premises, I find that this is a deserving application for extension of time. Accordingly, I allow the same and deem the Record of Appeal filed on 7th October 2021 and the Supplementary Record of Appeal filed on 25th October 2021 to have been filed on time. 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

