



Keraro (Suing as Administrator of the Estate of Kenyanya Keraro (Deceased)) v Kiage & 4 others (Civil Application E148 of 2021) [2022] KECA 481 (KLR) (25 March 2022) (Ruling)

Neutral citation: [2022] KECA 481 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION E148 OF 2021
F TUIYOTT, JA
MARCH 25, 2022**

BETWEEN

**NELSON MACHOKA KERARO APPLICANT
SUING AS ADMINISTRATOR OF THE ESTATE OF KENYANYA KERARO
(DECEASED)**

AND

ABEL ONTWEKA KIAGE & 4 OTHERS RESPONDENT

(Being an application for extension of time and leave to file records of appeal out of time from the decision of (Onyango, J) delivered on 13th October, 2020)

RULING

1. Brought pursuant to Rule 4 of the [Rules](#) of this Court is an application dated 2nd November, 2020 seeking leave of this Court to extend time for the filing of a notice of appeal and, as well, the record of appeal against the decision of Hon. Onyango, J in Kisii ELC Petition No.9 of 2019.
2. In an affidavit filed in support of the application, this Court is told that the ruling which aggrieves the applicant was delivered on 13th October, 2020 via Zoom. That once the applicant's advocate received information of the decision, he prepared a notice of appeal on 26th October, 2020 but could only file it on 10th November, 2021 (perhaps 10th November, 2020!). That, thereafter, in the month of December, 2020 his advocate, Mr. Sagwe, fell sick.
3. Only the 1st respondent responded to the application. In a sum, his answer to the application is that the long delay is not satisfactorily explained.
4. Under Rule 4, the Court is granted power to extend time limited for the doing of an act under the rules or which is prescribed by a decision of this Court or of a superior court for the doing of any act authorized or required under the rules. The power, though discretionary, is to be exercised judiciously.



So that the exercise of the discretion is properly guided, the Court considers, inter alia, the length of delay, the reasons for delay, any prejudice that grant of leave will cause to the respondent and, possibly, whether the intended appeal is arguable. See *Fakir Mohamed vs. Joseph Mugambi & 2 others* [2005] eKLR.

5. Even if the Court was to accept that the lateness in tracing the court file for purposes of lodging the notice of appeal and the subsequent illness of counsel in December, 2020 is excusable, still it is not an explanation as to why the applicant filed the application now before court about eleven (11) months after, in November 2021. While medical chits and other documents attached to the supporting affidavit suggest that counsel Sagwe was unwell on various dates of January 2021, May 2021, August 2021 and one day in September, 2021, counsel himself does not depone of his inability or that of his firm to ably represent his client on the days in 2021 when he was not unwell or to demonstrate that he or his firm could only file the application when it did on account of prolonged illness. This long delay, unexplained, is inordinate and is sufficient reason for the Court to decline the request. And as I am not told of exceptional circumstances that can persuade me to overlook the inordinate delay, I have to disallow the application.
6. The application of 2nd November, 2021 is dismissed with costs.

DATED AND DELIVERED AT KISUMU THIS 25TH DAY OF MARCH, 2022.

F. TUIYOTT

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JUDGE OF APPEAL

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

Signed.

DEPUTY REGISTRAR

