



REPUBLIC OF KENYA



KENYA LAW
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**Clement O. Sakiri v Anyumba (Civil Application E170 of 2021)
[2022] KECA 505 (KLR) (28 April 2022) (Ruling)**

Neutral citation: [2022] KECA 505 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT ELDORET
CIVIL APPLICATION E170 OF 2021**

PO KIAGE, JA

APRIL 28, 2022

BETWEEN

CLEMENT O. SAKIRI APPLICANT

AND

ROSEBELLA ANYUMBA RESPONDENT

(Being an application for extension of time for lodging a Notice of Appeal and Record of Appeal against the Judgement and Decree of the Environment and Land Court at Migori (G. M. A. Ong'ondo, J.) delivered on 28th September, 2021 in ELC NO. 805 OF 2017)

RULING

1. The much-flogged plea rule that the mistake of counsel should not be visited upon an innocent litigant does not have a blanket application and neither does it have doctrinal status. The court will always look at the conduct of the party pointing the finger of blame in order to make a just decision. See [Dagare Ransporters Limited -vs- Chevron Kenya Limited](#) [2020] eKLR.
2. The applicant, Clement O. Sakiri, has moved the Court by a Motion dated 9th December, 2021, seeking the following orders;
 - a. That this Honourable Court be pleased to extend time within which the Applicant may file his Notice of Appeal and Record of Appeal out of time.
 - b. That the costs of this application be in the cause.
3. The application is based on 9 grounds and is supported by an affidavit sworn by the applicant. He deposed that the impugned judgment was delivered on 28th September 2021. Aggrieved by the decision, he instructed his former advocates, M/s Odondi Awino & Company Advocates to prefer an appeal. At the end of October, he visited the advocate's offices to establish the progress of the appeal only to be informed that Mr. Awino did not wish to act for him anymore. He then sought new representation.



The counsel currently on record took over the matter, filed a notice of change of advocates by consent on 11th November, 2021, lodged a letter bespeaking the proceedings. Counsel urged that the delay, which was occasioned by the former advocate, was not inordinate and therefore this application should be allowed.

4. The respondent filed a replying affidavit. In a nutshell, she deposed that this application is a waste of the Court's time. The delay is inordinate and the applicant has failed to proffer a satisfactory reason for it.
5. The Supreme Court devised principles to be considered in an application for extension of time in *Nicholas Kiptoo Arap Korir Salat -vs- Independent Electoral and Boundaries Commission & 7others* [2014] eKLR as follows;

- “1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;
2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court
3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
5. Whether there will be any prejudice suffered by the respondents if the extension is granted;
6. Whether the application has been brought without undue delay; and
7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.” See also *Leo Sila Mutiso -vs-rose Hellen Wangari Mwangi* (1999) 2 EA 231

6. I have considered the application but I am afraid I am not persuaded by the reason proffered for the delay. As earlier stated, solely blaming one's advocate is not enough to unlock the Court's discretionary favor. The applicant has failed to advance any evidence of the actions he took, as the litigant and owner of the appeal, to have it lodged in time. All he did was change advocates once time had already lapsed. See *Rajesh Rughani-vs-fifty Investments Limited & another* [2016] eKLR.
7. Even though there is period set by the law, beyond which delay is ipso facto inordinate, anyone seeking this relief must satisfactorily explain the cause of the delay. See *Andrew Kiplagat Chemaringo-vs- Paul Kipkorir Kibet* [2018] eKLR. I am not convinced that the applicant has satisfactorily explained the delay. I note, in fact, that the current advocates took about a month after coming on record, to make this application. No explanation is given for that delay.
8. In the result, I decline to grant the prayers as sought and accordingly dismiss the application with costs.

DATED AND DELIVERED AT KISUMU THIS 28TH DAY OF APRIL, 2022.

P. O. KIAGE

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JUDGE OF APPEAL

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



Signed

DEPUTY REGISTRAR

