



**Dekoma Slaughter House, Meat Vendors & Livestock Dealers Co-operative Society v  
Mato (Civil Application E295 of 2021) [2022] KECA 943 (KLR) (22 July 2022) (Ruling)**

Neutral citation: [2022] KECA 943 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E295 OF 2021**

**DK MUSINGA, JA**

**JULY 22, 2022**

**BETWEEN**

**DEKOMA SLAUGHTER HOUSE, MEAT VENDORS & LIVESTOCK DEALERS  
CO-OPERATIVE SOCIETY ..... APPLICANT**

**AND**

**MAINA MAMO MATO ..... RESPONDENT**

*(Being an application for extension of time to file a notice of appeal against  
the Ruling and Order of the Environment and Land Court at Thika  
(L. Gacheru, J.) delivered on 26th July 2021 in E.L.C. No. 196 of 2017)*

**RULING**

1. The applicant's Notice of Motion dated 17<sup>th</sup> August 2021 is brought under rules 4, 42 and 43 of this Court's *Rules* and seeks extension of time to enable the applicant file a notice of appeal against the ruling and order of Gacheru, J. in Environment and Land Court, Civil Appeal No. ELC 196 of 2017 at Thika, delivered on 26<sup>th</sup> July 2021.
2. In an affidavit sworn by Gorrety A. Otieno, the applicant's Advocate, she states that the ruling sought to be appealed from was delivered in her absence because a notice from the court had indicated that the ruling would be delivered on 27<sup>th</sup> July 2021 but unknown to her, there was a subsequent notice to the effect that the ruling would be delivered on 26<sup>th</sup> July 2021. For that reason, she was not able to attend court when the ruling was delivered. She only became aware of its delivery on 29<sup>th</sup> July 2021. Subsequently, she applied for a copy of the ruling, which was furnished on 5<sup>th</sup> August 2021 and shortly thereafter she forwarded the ruling to the applicant's chairman, who in turn said that he needed to consult with the appropriate members of the applicant's society before he could give further instructions to their advocates.



3. On 16<sup>th</sup> August 2021, the applicant instructed their counsel to lodge an appeal against the ruling but by that time the fourteen (14) days period for filing the notice of appeal had lapsed. It is for those reasons that the applicant seeks extension of time to file the intended appeal.
4. Although the respondent's advocate was served with a hearing notice on 3<sup>rd</sup> June 2022 indicating that this application would be heard on 15<sup>th</sup> June 2022 and requiring him to file submissions if he intended to oppose the application, the respondent did not file either a replying affidavit or submissions. That notwithstanding, the Court has to consider the application on its merits.
5. *In Leo Sila Mutiso v Rose Hellen Wangari Mwangi [1999] 2 EA 231*, this Court delivered itself as follows: -

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well stated 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 the 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 this application, the ruling sought to be appealed from was delivered on 26<sup>th</sup> July 2021 but this application was not filed until 17<sup>th</sup> August 2021. The applicant has explained the reasons for that delay, which I do not think is inordinate.
7. That notwithstanding, the applicant has not made any attempt to demonstrate that the intended appeal has any chances of success. There is no averments to that effect in the affidavit sworn in support of the application, and neither did the applicant file a draft memorandum of appeal.
8. I have perused the impugned ruling. The applicant sought to set aside the trial court's orders given on 14<sup>th</sup> October 2019 dismissing its appeal for want of prosecution and reinstatement of the appeal. The first appellate court in exercise of its discretion dismissed the application. The applicant has not attempted to show that the learned judge exercised her discretion injudiciously.
9. The applicant, having failed to show that the intended appeal has good chances of success, cannot be granted the orders sought. Consequently, I dismiss the notice of motion dated 17<sup>th</sup> August 2021. Given that the respondent did not file any document in response to the application, I make no order as to costs.

**DATED AND DELIVERED AT NAIROBI THIS 22<sup>ND</sup> DAY OF JULY, 2022.**

**D. K. MUSINGA, (P)**

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**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**

