



**Munyeke v Mbilo & 5 others (Civil Application E332 of 2021)  
[2022] KECA 999 (KLR) (23 September 2022) (Ruling)**

Neutral citation: [2022] KECA 999 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E332 OF 2021  
W KARANJA, JA  
SEPTEMBER 23, 2022**

**BETWEEN**

**GEORGE MWONGELA MUNYEKE ..... APPLICANT**

**AND**

**JOYCE MBENYI MBILO ..... 1<sup>ST</sup> RESPONDENT**

**WILLY MBILO ..... 2<sup>ND</sup> RESPONDENT**

**JOHN NYAMAI MBILO ..... 3<sup>RD</sup> RESPONDENT**

**PAUL MWANGANGI MBILO ..... 4<sup>TH</sup> RESPONDENT**

**SIMON MUTUA MBILO ..... 5<sup>TH</sup> RESPONDENT**

**MUTINDA MBILO ..... 6<sup>TH</sup> RESPONDENT**

*(An application for leave to appeal out of time against the judgment  
of the Environment and Land Court at Makueni (Mbogo, J.)  
delivered on 28th November, 2019 in ELC Case No. 16 of 2007)*

**RULING**

1. The applicant herein has moved this Court vide his Notice of Motion dated September 20, 2021 brought under Rule 4 of the *Court of Appeal Rules* (the Rules) whereby he essentially prays for leave of the Court to file an appeal out of time against the Judgment in Makueni ELC NO 16 of 2007 delivered on November 28, 2019. He also prays that costs of the application be in the appeal.
2. The application is premised on grounds that; the applicant herein was dissatisfied with the judgment in its entirety and is desirous of filing an appeal; he filed a Notice of appeal dated January 6, 2020 and served it on the respondents on January 23, 2020; the applicant did a letter to the Deputy Registrar requesting for a certified copy of the proceedings together with the judgment for the purposes of



preparing a record of appeal which letter was dated and received on April 16, 2021. The other grounds revolve around the delay in filing all the documents herein and the explanation given is that counsel was indisposed at some point or his parents were indisposed and somehow, he was away from his office and was unavailable to take instructions to file the documents on time. He avers that the delay was therefore inadvertent and should be countenanced. The application is supported by the applicant's affidavit sworn on September 20, 2021 wherein he repeats the said grounds.

3. The application is opposed by the respondents through the affidavit sworn by the 1<sup>st</sup> respondent on October 22, 2021 on her behalf and on behalf of the other respondents. The respondents strongly oppose the application on grounds that it is brought 2 years after delivery of the judgment now impugned; the delay is inordinate and the delay has not been sufficiently explained; the matter is an old one, over 14 years in court and there ought to be finality in litigation; that the respondents will be greatly prejudiced if the matter continues to pend in court after all these years.
4. The respondents maintain that the appeal is misconceived with no chances of success as the applicant's claim before the trial court which was challenging the land adjudication process, was dismissed for lack of *locus standi* on the part of the applicant because the entries in the adjudication register the applicant was challenging were not in his name but in the names of his two spouses. The respondents say that the applicant has not demonstrated to this Court that he indeed has the requisite locus standi, contrary to the trial court's findings.
5. Both parties filed submissions expounding on their rival positions. I have considered the application along with the rival affidavits and submissions of the parties and the applicable law. Rule 4 of this Court's Rules gives the Court unfettered discretion to extend time limited by these rules to extend such time as it deems just. The Court in *Leo Sila Mutiso v. Hellen Wangari Mwangi* [1999] 2 EA 231 set out the principles that guide this Court in such an application 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 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 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.”

See also the decision in *Fakir Mohammed v. Joseph Mugambi & 2 others* [2005] eKLR.

These principles have been reiterated and expounded in many subsequent decisions of this Court and even by the Supreme Court. The principles were clearly elucidated in *Muringa Company Ltd v. Archdiocese of Nairobi Registered Trustees* [2020] eKLR as follows:

“Some of the considerations, which are by no means exhaustive, in an application for extension of time include the length of the delay involved, the reason or reasons for the delay, the possible prejudice, if any, that each party stands to suffer, the conduct of the parties, the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal, the need to protect a party's opportunity to fully agitate its dispute, against the need to ensure timely resolution of disputes; the public interest issues implicated in the appeal or intended appeal and whether, prima facie, the intended appeal has chances of success or is a mere frivolity.”

6. Have the applicants demonstrated the above ingredients to warrant my exercise of discretion in their favour? On the question of the delay involved in the matter, it is not disputed that this matter has been



in court for 14 years and running. Although I am not in a position to apportion blame as to who was responsible for the delay, I note that the application for extension of time was filed 2 years and 2 months after delivery of the impugned judgment. The main reason for the delay was that counsel's parents were sick at one point, or that he was also indisposed. These averments have not been made by counsel but by the applicant himself. They amount to hearsay and are thus unacceptable and inadmissible. Even the applicant's averment that he was unwell at some point is not supported by any evidence.

7. The issue of Covid-19 is neither here nor there as it is common knowledge that court documents were being filed online and the applicant did not need to physically visit the court registry to file his documents. It is my considered view, therefore, that the delay of 2 years 2 months, which I find inordinate has not been plausibly explained.
8. On whether the applicant has a good appeal, there is no memorandum of appeal attached to the application and the impugned judgment is not attached either. Save for what the respondents have stated, the Court has no idea what the dispute was about and whether the intended appeal has any chance of success or the intended appeal is only meant to delay the matter further.
9. On the question of prejudice, the matter has been hanging over the respondents' heads for 15 years. They have a valid judgment in their favour and they should be allowed to enjoy the fruits of the judgment. For all the foregoing reasons, I am not persuaded that this application has merit.

Accordingly, the same is dismissed with costs to the respondents.

**DATED AND DELIVERED AT NAIROBI THIS 23<sup>RD</sup> DAY OF SEPTEMBER, 2022.**

**W. KARANJA**

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**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**

