



REPUBLIC OF KENYA



**KENYA LAW**  
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**Njagi v Gakuna & 3 others (Civil Application E016 of 2020)  
[2022] KECA 1191 (KLR) (26 October 2022) (Ruling)**

Neutral citation: [2022] KECA 1191 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CIVIL APPLICATION E016 OF 2020  
F SICHALE, JA  
OCTOBER 26, 2022**

**BETWEEN**

**MARY WANJIRU NJAGI ..... APPLICANT**

**AND**

**DICKSON MUIGAI GAKUNA ..... 1<sup>ST</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**LAND REGISTRAR NYANDARUA ..... 3<sup>RD</sup> RESPONDENT**

**PRINCIPAL MAGISTRATE NYAHURURU LAW COURTS .. 4<sup>TH</sup> RESPONDENT**

*(Being an Application for extension of time to file and serve Record of Appeal against the judgment of the Environment & Land Court at Nakuru (Sila J) dated 3rd July 2019.) in Nakuru ELC Petition No. 4 of 2018)*

**RULING**

1. Mary Wanjiru Njagi (the applicant herein), has *vide* a motion dated October 27, 2021, brought pursuant to the provisions of rules 4 and 82 of the [Court of Appeal Rules 2010](#) and the inherent jurisdiction of the court sought the following orders:
  1. That the honourable court be pleased to enlarge the time within which the applicant may file her record of appeal.
  2. That the applicant's record of appeal filled on September 18, 2020, be deemed as properly on record.
  3. That cost of this application be in the cause."



2. The motion is supported on the grounds on the face of the motion and an affidavit sworn by the applicant who deposed *inter alia* that she only learnt of the judgment on July 22, 2019, when a copy thereof was served on her advocate by the 1<sup>st</sup> respondent's advocate which necessitated her to file an application for extension of time within which to file notice of appeal which application was allowed by consent on October 22, 2019.
3. She further deposed that she subsequently made an application for typed copies of the proceedings but the ELC court never notified her that they were ready for collection despite the same being certified as true copies on March 12, 2020, when she found out and later went to collect them personally and that further restriction on movement in and out of Nairobi due to covid 19 hindered efforts to follow up on the proceedings and that further her advocate managed to collect the same on July 8, 2020, after lifting of the ban on movement.
4. That, on September 18, 2020 she filed and served her record of appeal but the failure to file it within the statutory period was not deliberate and neither was it occasioned by indolence on her part, but rather by unfortunate times brought about by restrictions on movement and suspension of court matters.
5. The application was opposed *vide* a replying affidavit of Joseph Karanja Mbugua, counsel who has the conduct of this matter on behalf of the respondent, sworn on September 17, 2022 in which he deposed *inter alia* that he was only served with the instant motion on September 15, 2022 and only after being served with a hearing notice by the court registry and that further a similar application had been filed in the superior court on August 2, 2019, seeking similar reliefs where it was *inter alia* agreed by consent that the applicant should file and serve her notice of appeal within 14 days from October 22, 2019.
6. That it was a further term of the consent that should the applicant default in compliance of any of the conditions in the consent, the consent order would stand set aside and that the applicant having defaulted on some of the terms of the consent, the notice of appeal was non-existent and the record of appeal incompetent.
7. I have carefully considered the motion, the grounds thereof, the supporting affidavit, the replying affidavit, and the law
8. In the instant case, it is indeed not in dispute that the applicant had filed an application dated May 6, 2019 in the superior court seeking extension of time within which to file notice of appeal which application was allowed by consent on October 22, 2019, a fact that the applicant has alluded to in paragraph B on the grounds in support of the motion.
9. The respondent contends that the applicant has not complied with some of the terms set out in the consent order dated October 22, 2019 and that it was a further term of the said consent that should the applicant default in compliance with any of the conditions set out in the consent order, the same would stand set aside and that the notice of motion dated May 6, 2019, stands dismissed and that in essence, the notice of appeal filed herein was nonexistent and the record of appeal incompetent. It is worthy of note that the applicant has not rebutted this contention by the respondent.
10. In view of the above and the applicant having defaulted on some of the terms of the consent order dated October 22, 2019, there is no valid notice of appeal upon which the applicant can subsequently file and serve a record of appeal.
11. Accordingly, the applicant's motion dated October 27, 2021 is without merit and the same is hereby dismissed with costs to the 1<sup>st</sup> respondent.

Orders accordingly.



DATED AND DELIVERED AT NAKURU THIS 26<sup>TH</sup> DAY OF OCTOBER, 2022.

F. SICHALE

.....

JUDGE OF APPEAL

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

*Signed*

**DEPUTY REGISTRAR**

