



REPUBLIC OF KENYA



KENYA LAW
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**Mbicari v Njue (Civil Application 111 (UR 76 OF 2019) of 2019)
[2022] KECA 1436 (KLR) (14 October 2022) (Ruling)**

Neutral citation: [2022] KECA 1436 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION 111 (UR 76 OF 2019) OF 2019
W KARANJA, JA
OCTOBER 14, 2022**

BETWEEN

JOSPHAT MBICARI APPLICANT

AND

IRENE WEVETI NJUE RESPONDENT

*(Being an application for extension to file an appeal, out of time from
the judgment of the ELC Court at Embu (Angima, J.) dated 23rd May,
2019 in ELC Case No. 168 of 2014 Formerly HCC No. 49 OF 2000)*

RULING

1. Joshphat Mbicari (the applicant) was one of the defendants in Embu ELC Case No 168 of 2014, having been sued by the respondent (Irene Weveti) who sought orders of his +eviction from parcel of land Number Mbeti/kiamuringa/1815, general damages for loss of user of her land, costs and interest. It was the respondent's case that she was a purchaser for value of the suit property from the registered owner and the applicant was a trespasser thereon, but the applicant was claiming that the respondent had acquired the suit land fraudulently and wrongly.

After hearing the parties, the court found that the land rightly belonged to the respondents and granted the prayer for eviction, in a judgement delivered on May 23, 2017.

2. The applicant was dissatisfied with that judgment and intends to file an appeal against it. Unfortunately, the applicant was unable to file the notice of appeal within the 14 days prescribed under the *Court of Appeal Rules*; hence his application for extension of time to file the appeal, dated July 16, 2019. The application is premised on some nine grounds on its face and supported by the applicant's affidavit sworn on even date. The pith and substance of the grounds on the face of the application and the depositions in the affidavit is that the applicant is an indigent litigant who was appearing in person. After judgment was delivered. he was given 90 days to vacate the suit property. He says that he had



lived on the said property for many years; he is an elderly man and the judgment impacted him in a way that left him distraught and unwell. He says he has a good appeal and entreats this Court to give him an opportunity to pursue the appeal.

The application does not appear to be opposed as no replying affidavit was filed. Learned counsel for the respondent though served with the hearing notice and directions requiring him to file submissions did not file any submissions or respond to the notice in any other way.

3. The principles that guide the Court in an application to extend time within which to file an appeal are clearly enunciated in many decisions from this Court and also from the Supreme Court. Such cases include *Leo Sila Mutiso v Hellen Wangari Mwangi* [1999]2 EA 231 where this Court pronounced 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; *Muringa Company Ltd v Archdiocese of Nairobi Registered Trustess*, [2020] eKLR .

4. I have considered the application alongside the above cited principles. On the reasons given for the delay, I appreciate the fact that the applicant is an elderly person; he was threatened with eviction from his home and as he deposes in his affidavit, this could have shocked him to an extent of not having his presence of mind to file the Notice of appeal within the prescribed time limit.

I have also read the impugned judgment. The applicant raised an issue of trust saying that the suit property was family land and that he and his family were living on the said land even as at the time it was sold to the respondent, and even after the sale transaction.

5. I note that the delay involved in this matter is about 2 months which given the nature and circumstances of the case cannot be said to be inordinate. The explanation tendered for the delay is plausible and sufficient to explain the delay of 2 months. I have also seen the applicant’s draft grounds of appeal and I do not think the appeal is frivolous. The applicant should have his day in Court to ventilate his claim.

Accordingly, I find this application with merit and I allow it, with no order as to costs. Leave is hereby granted to the applicant to file and serve the Notice of appeal within 14 days from the date hereof and thereafter file and serve the record of appeal within 30 days from the date of filing of the Notice of appeal.

DATED AND DELIVERED AT NYERI THIS 14TH DAY OF OCTOBER, 2022.

W. KARANJA

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR

