



**Munyao & 7 others v Kainamia & another (Civil Application  
E020 of 2021) [2022] KECA 1193 (KLR) (12 October 2022) (Ruling)**

Neutral citation: [2022] KECA 1193 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CIVIL APPLICATION E020 OF 2021  
F SICHALE, JA  
OCTOBER 12, 2022**

**BETWEEN**

**TABITHA WAMBUI MUNYAO ..... 1<sup>ST</sup> APPLICANT  
GEOFRREY KANIA MUNYAO ..... 2<sup>ND</sup> APPLICANT  
ISAAC NJENGA MUNYAO ..... 3<sup>RD</sup> APPLICANT  
PETER GITHINJI MUNYAO ..... 4<sup>TH</sup> APPLICANT  
JOHN MURAGE ..... 5<sup>TH</sup> APPLICANT  
NGOTHO MUNYAO ..... 6<sup>TH</sup> APPLICANT  
CHARLES KINUTHIA MUNYAO ..... 7<sup>TH</sup> APPLICANT  
SAMUEL NDUNGU MUNYAO ..... 8<sup>TH</sup> APPLICANT**

**AND**

**PETER NGUGI KAINAMIA ..... 1<sup>ST</sup> RESPONDENT  
JOHN MURAYA KAINAMIA ..... 2<sup>ND</sup> RESPONDENT**

*(Being an Application for extension of time to file an appeal against the ruling of the Environment & Land Court at Nyahururu (Oundo J) dated 23rd June 2020 INELC Case No. 245 of 2017 (formerly Nakuru ELC Case no. 41 of 2016.))*

**RULING**

1. The application before me is a motion dated 6<sup>th</sup> April 2021, brought pursuant to the provisions of Order 50 Rule 6 of the Civil Procedure Rules 2010, Sections 27 & 28 of Limitation of Actions Act CAP 22 of the Laws of Kenya Rules 4, 42 & 43 of the Court of Appeal Rules 2010, Sections 1A, 1B & 3A of the Civil Procedure Act and all other enabling provisions of the Law in which the applicants herein



seek extension of time within which to file a Notice of Appeal against the ruling of Oundo J dated 23<sup>rd</sup> June 2020.

2. The motion is supported on the grounds on the face of the motion and an affidavit sworn by the 1<sup>st</sup> applicant who deposed inter alia that they were desirous of filing an appeal against the impugned ruling and that they were yet to be supplied with certified copies of the proceedings and judgment as the same could not be supplied as covid 19 had been ravaging the whole country with lockdown disrupting court operations thus occasioning the delay in filling the Notice of Appeal.
3. The motion was opposed vide a replying affidavit sworn by the 2<sup>nd</sup> respondent on 5<sup>th</sup> September 2022, who deposed inter alia that on 23<sup>rd</sup> June 2020, the applicants were granted a stay of execution pending appeal on condition that they deposit Kshs 1,500,000/= as security in Court which condition they never complied with and that despite the Court ordering the applicants to vacate the suit property, they refused to do so whereupon the Court issued eviction orders which eviction was effected on 9<sup>th</sup> August, 2021 by Wanderi Auctioneers.
4. He further deposed that the application beforehand was frivolous, vexatious and an abuse of the court process since there already exists a Notice of Appeal in this matter filed by the firm of Waiganjo & Company advocates which the applicants were well aware of as it was an annexure in their application dated 23<sup>rd</sup> December 2019.
5. It was submitted for the applicants inter alia that they had given sufficient reasons as to why they delayed in filing the appeal and that further no prejudice would be suffered by the respondents if the instant application were to be allowed.
6. I have carefully considered the motion, the grounds thereof, the supporting affidavit, the further affidavit, the replying affidavit, the applicants' submissions and the law.
7. The principles upon which this Court exercises its discretion under Rule 4 are firmly settled. The Court has wide and unfettered discretion in deciding whether to extend time or decline the same. However, in exercising its discretion the Court should do so judiciously.

See *Mwangi v Kenya Airways Limited* [2003] eKLR 486 where this Court stated thus:

“Over the years, the Court has set out guidelines on what a single Judge Should consider when dealing with an application for extension of time under Rule 4 of the Rules. For instance, in *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* (Civil Application No. Nai 255 of 1997 (unreported), the Court expressed itself thus;

“It is now well settled that the decision whether or not to extend 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.”

8. In the instant case, and as regards the length of the delay, the impugned ruling was delivered on 23<sup>rd</sup> June 2020 whereas the instant motion is dated 6<sup>th</sup> April 2021. There has therefore been a delay of about 10 months which I consider to be inordinate.
9. Regarding reasons for the delay, the applicants appear to be blaming Covid 19 Pandemic which had disrupted court operations hence the delay in filing the Notice of Appeal. Save for a receipt evidencing



payment of certified copies of judgment and proceedings, there is no other evidence showing the efforts that the applicants made to follow up on the proceedings.

10. Even if it were to be believed that the indeed covid 19 was to blame for the delay in filling the Notice of Appeal, the applicants have still not explained why they filed the instant application late. Moreover, the 2<sup>nd</sup> respondent vide his replying affidavit sworn 5<sup>th</sup> September 2022 has deposed inter alia that there is already a Notice of Appeal in place filed by the applicants' former advocates, a fact which is well within the applicants' knowledge and which they have not controverted. A situation where there are two Notices of Appeal in respect of the same subject matter is not tenable.
11. In view of the above, I am not satisfied that the delay herein has been explained to the satisfaction of this Court and I find the reasons given for the delay not to be plausible.
12. With regard to the possibility of the appeal succeeding, I cannot make a definitive finding on this issue sitting a single judge and I will make no further comment regarding the same.
13. As regards prejudice, the applicants have already been evicted from the suit land and I am of the considered view that they will not suffer any prejudice if the instant application is declined.
14. Given the circumstances, I find that the applicants have not demonstrated and satisfied the existence of the principles for consideration in the exercise of my unfettered discretion pursuant to Rule 4 of this Court to extend time to file the Notice of Appeal.
15. Whereas this Court empathizes with the applicants who are unrepresented and this would probably explain why they subsequently filed another motion dated 1<sup>st</sup> August 2022, seeking inter alia similar orders through one Elizabeth Ngugi and more so the 1<sup>st</sup> applicant herein who avers that she is elderly and poor and has been living on the suit land for over 50 years, this Courts hands are tied and the applicants' application can only suffer one fate, dismissal.
16. Accordingly, the applicants motion dated 6<sup>th</sup> April 2021, is hereby dismissed with no order as to costs.  
Orders accordingly.

**DATED AND DELIVERED AT NAKURU THIS 12TH DAY OF OCTOBER, 2022.**

**F. SICHALE**

**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**

