



REPUBLIC OF KENYA



KENYA LAW
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**Njoroge v Ndirangu (Civil Application E034 of 2022)
[2022] KECA 1199 (KLR) (12 October 2022) (Ruling)**

Neutral citation: [2022] KECA 1199 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPLICATION E034 OF 2022
F SICHALE, JA
OCTOBER 12, 2022**

BETWEEN

GRACE WANGARI NJOROGE APPLICANT

AND

**ROSE WANJIRU NDIRANGU ALIAS ROSE WANJIRU
MUGWANJA RESPONDENT**

(Being an Application for leave to file Notice of Appeal, Memorandum and Record of Appeal out of time against the Judgment of the Environment & Land Court (Angima J) dated 5th May 2022.) IN (Nyahururu ELC Case No. 62 of 2018 (OS))

RULING

1. Grace Wangari Njoroge (the applicant herein), has vide a motion dated June 23, 2022, brought pursuant to the provisions of sections 1A, 1B, 3A of the [Civil Procedure Act](#) 2010, order 50 rule 6 of the [Civil Procedure Rules](#) and all other enabling provisions of the Law sought the following orders;
 1. Spent.
 2. That leave be granted to the firm of Martin Gathumbi & Company Advocates to come on record for the applicant.
 3. That this honourable court be pleased to grant the applicant leave to file her notice of appeal out of time against the judgment delivered at Nyahururu by Hon YM Angima J on May 5, 2022 and serve the same out of time.
 4. That the draft notice of appeal filed herein be deemed as duly and properly filed.
 5. That this honourable court be pleased to grant stay of execution pending the hearing and determination of the application and the intended appeal.



6. That costs 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 Angima J had vide a judgment delivered on May 5, 2022, dismissed her statement of defence and that she was not aware of the judgment date and was thus unable to lodge the notice of appeal within the stipulated timeline.
3. She further deposed that being dissatisfied with the aforesaid judgment, she was desirous of appealing against the same and that further the intended appeal was arguable with high chances of success.
4. There was no response on part of the respondent and neither did any of the parties file submissions.
5. I have carefully considered the motion, the grounds thereof, the supporting affidavit and the law. 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.
6. See *Fakir Mohamed v Joseph Mugambi & 2 Others CA No NAI 332* of 2004 where the court laid out some of the considerations to be taken into account by court in deciding applications of these nature as follows; the length of the delay, the causes of the delay, the possibility of the appeal succeeding and prejudice to be occasioned to the parties.
7. In the instant case, the impugned judgment was delivered on May 5, 2022. The notice of appeal therefore ought to have been filed on May 19, 2022 whereas the instant motion is dated June 23, 2022. There has therefore been a delay of 30 days from the date when the notice of appeal ought to have been filed to the date that the instant application was filed on June 23, 2022 which in my opinion I do not consider to be inordinate.
8. Regarding the reasons for the delay, the applicant contended that she was not aware of the judgment date as the same was not served upon her and as such she was unable to lodge the notice of appeal within the stipulated timeline. I have indeed looked at the judgment of the ELC court and the record shows that she was not present when the same was being delivered. It would appear that the applicant was acting in person. From the circumstances of this case, I am satisfied that the reasons given for the delay are plausible and the same have been explained to the satisfaction of this court.
9. As to whether the intended appeal has possible chances of succeeding, I am mindful of the fact that I cannot make a definitive finding on this issue sitting as a single judge lest I embarrass the bench that will be eventually seized of this matter and I will therefore make no further comments regarding the same.
10. Regarding prejudice, I am satisfied that the applicant will be prejudiced if the instant motion is not allowed as her right of appeal will have been completely shut out. In any event, the respondent has not even opposed the motion.
11. Accordingly, the applicant's motion dated June 23, 2022, is merited and I accordingly allow the same in in terms of prayers 2, 3 and 4 thereof. The prayer for stay of execution is however declined as I cannot issue such orders sitting as a single judge of this court.
12. The applicant is hereby directed to file and serve the record of appeal within **60** days from the date of this ruling failure to which these orders shall stand vacated.
13. The costs of the motion shall abide the outcome of the intended appeal. Orders accordingly.

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

F. SICHALE



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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

