



REPUBLIC OF KENYA



**KENYA LAW**

THE NATIONAL COUNCIL FOR LAW REPORTING

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**Denancy Investment Limited & another v Stavroula Georgopoulou  
(formerly) Stavroula Rousals & 7 others (Civil Appeal (Application)  
E007 of 2022) [2022] KECA 1078 (KLR) (7 October 2022) (Ruling)**

Neutral citation: [2022] KECA 1078 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL (APPLICATION) E007 OF 2022  
KI LAIBUTA, JA  
OCTOBER 7, 2022**

**BETWEEN**

**DENANCY INVESTMENT LIMITED ..... 1<sup>ST</sup> APPLICANT**

**DAVID RONALD NGAL ADHOCH ..... 2<sup>ND</sup> APPLICANT**

**AND**

**STAVROULA GEORGOPOULOU (FORMERLY) STAVROULA ROUSALS .... 1<sup>ST</sup>  
RESPONDENT**

**LABH SINGH HARMAN SINGH LIMITED ..... 2<sup>ND</sup> RESPONDENT**

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

**ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**SILVER BRIDGE INVESTMENT LTD ..... 5<sup>TH</sup> RESPONDENT**

**REAL ENERGY LIMITED ..... 6<sup>TH</sup> RESPONDENT**

**HOKING (KENYA) REAL ESTATE CO LTD ..... 7<sup>TH</sup> RESPONDENT**

**NATIONAL LAND COMMISSION ..... 8<sup>TH</sup> RESPONDENT**

*(Being an application for extension of time to file a Notice of Appeal and Record of Appeal out of time and leave to amend the Memorandum of Appeal, against the Ruling and Order of the Environment and Land Court at Makueni (C. G. Mbogo, J.) dated 9th February 2022 in E. L. C Case No. 86 of 2016 (formerly Machakos No. 4 of 2016))*



## RULING

1. Before me is a Notice of Motion dated 14<sup>th</sup> January 2022 made under Rules 4, 5(2) (b), 16, 39, 40, 44 and 47 of the *Court of Appeal Rules*, 2010 in which the Applicants (Denancy Investment Ltd and David Ronald Ngal Adhoch) seek, inter alia. extension of time pursuant to Rule 4 to lodge a notice of appeal and record of appeal out of time from the Ruling and Order of the Environment and Land Court at Makueni (C. G. Mbogo, J.) delivered on 9<sup>th</sup> February 2021 in ELC Case No. 86 of 2016 (formerly Machakos No. 4 of 2016).
2. The applicants also seek stay of proceedings in ELC Case No. 86 of 2016 pursuant to Rule 5(2) (b) pending determination of the application; leave to amend their Memorandum of Appeal dated November 23, 2021 in terms of the annexed draft Amended Memorandum of Appeal; and cost of the application. Suffice it to observe that, apart from the prayer for costs, the applicants' request for stay of proceedings falls outside the jurisdiction of a single Judge.
3. The Applicants' Motion for extension of time is made on the grounds that the timeline within which they ought to have filed their notice and record of appeal has lapsed; that, following the impugned ruling of 9<sup>th</sup> February 2021, the applicants instructed their advocates to lodge an appeal against the said ruling; that, although their advocates indicated to the 1<sup>st</sup> applicant's director that the appeal had been filed, it turned out that it was not; that it was not until January 11, 2022 that the advocates hurriedly filed a Memorandum of Appeal dated 23<sup>rd</sup> November 2021, and which they also seek to amend; and that "... the applicants' advocates' failure to file the appeal within time amounts to a deliberate act of omission and a mistake for which the applicants are innocent litigants the said mistake ought not be visited upon the applicants" [sic]
4. The Applicants' Motion is supported by the annexed affidavit of Abdirashid Abdul Sharifow (the 1<sup>st</sup> applicant's director) sworn on January 14, 2022, and in which he substantially restates the reasons for the delay in lodging the notice and record of appeal. Annexed to his affidavit are copies of the impugned ruling, the notice of appeal intended to be filed, and the draft Amended Memorandum of Appeal.
5. The respondents' oppose the applicant's Motion as evident from the replying affidavit of Kishore Nanji (learned counsel for the 1<sup>st</sup> respondent) sworn on 23<sup>rd</sup> May 2022. According to Mr. Naji, he received an email from the applicants' advocates (M/s. Otwal and Manwa Associates) to which there was attached a Notice of Appeal dated 16<sup>th</sup> February 2021 and lodged in court on 19<sup>th</sup> February 2021. He contends that the applicants' Motion is misconceived in so far as it seeks extension of time to lodge a notice of appeal. In addition, he contends that the application for leave to amend their Memorandum is also misconceived.
6. Having perused the record of appeal, I find that a Notice of Appeal dated February 16, 2021 had been lodged and received in the superior court on February 18, 2021. In view of the foregoing, I find that the applicants had lodged their notice of appeal in good time, and that their application for extension of time is misconceived. Accordingly, I hereby order and direct that the application for extension of time be and is hereby dismissed; and that leave is hereby granted pursuant to Rule 46 of this Court's Rules to the applicants to amend the Memorandum of Appeal in terms of the draft Amended Memorandum of Appeal dated January 14, 2022. The costs of this application shall be borne by the applicants in any event.

**DATED AND DELIVERED AT NAIROBI THIS 7<sup>TH</sup> DAY OF OCTOBER, 2022**



**DR. K. I. LAIBUTA**

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**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**

