



Wekesa (As the Legal Representative Of The Estate Of George Elam Wekesa) v Taib & 2 others (Civil Appeal (Application) 51 of 2019) [2022] KECA 1061 (KLR) (7 October 2022) (Ruling)

Neutral citation: [2022] KECA 1061 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT MOMBASA
CIVIL APPEAL (APPLICATION) 51 OF 2019
JW LESSIT, JA
OCTOBER 7, 2022**

BETWEEN

**KENNEDY ELLAM WEKESA APPLICANT
AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF GEORGE ELAM
WEKESA**

AND

**SHEIKH ALI TAIB 1ST RESPONDENT
ABDALLA ALI TAIB 2ND RESPONDENT
SELINA WEKESA WEKESA 3RD RESPONDENT**

(An application for extension of time to file a record of appeal against the ruling of the Environment and Land Court (Matheka, J) given on 6th December, 2018 in ELC No. 454 of 2002 (O.S))

RULING

1. The applicant has by a Notice of Motion dated May 4, 2022, brought pursuant to Rules 1 (2) and 4 of the *Court of Appeal Rules* sought to have an order extending time to file the Record of Appeal against the ruling of the Environment and Land Court delivered on December 6, 2018 out of time. The applicant sought further that the Record of Appeal dated March 26, 2018 and filed on the same date be deemed as duly filed.
2. The application is supported by grounds on the face of the motion and expounded in the affidavit in support sworn by the applicant and May 4, 2018. The application is premised on the ground that the cause of the delay was that when the applicant lodged his Record of Appeal the court directed that due to error in documentation the Record be re-filed. It was urged that the applicant obliged but was as a result late by one day.



3. The application is not opposed in that no replying affidavit or written submissions were filed by the respondent. In addition, when the application was called out for virtual hearing on the June 15, 2022, learned counsel Mr. William Wameyo for the applicant attended. However, learned counsel Mr. Taib for the respondent did not appear despite service with the hearing notice upon the firm on the May 17, 2022.
4. In *Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi* (Civil Application No. Nairobi 251 of 1997) (unreported) it was stated:

“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 the extension of time are first the length of the delay, secondly the reason given for the delay, thirdly (possibly) the chances of the appeal succeeding if the application is granted, and fourthly the degree of the prejudice to the respondent if the application is granted.”
5. I have considered this application, together with the supporting affidavit and the annexures thereto. I noted from a copy of this Court’s ruling annexed to the affidavit in support of this application and dated March 18, 2022 that the respondent sought to have the memorandum of appeal lodged on the April 11, 2019 and record of appeal dated March 26, 2019 struck out for being filed out of time without leave, among other reasons. In the said ruling this Court struck out the Record of Appeal and the memorandum of appeal but in the interest of justice, driven by the fact the delay in filing the Record was a single day, suspended its order of striking out for a period of 45 days to give the applicant time to make the requisite application for the extension of time under Rule 4 of the Court’s Rules.
6. The applicant has, in compliance with the ruling aforementioned now moved the court for leave under Rule 4 of this Court’s Rules as directed, the application has been brought within the time granted. In exercise of my discretion under Rule 4 of this Court’s Rule, I am satisfied that the order sought is merited in all the circumstances of the case.
7. In the result
 - i. The Notice of Motion dated 4th May 2022 is granted in terms of order 1 and 2.*
 - ii. The applicant should serve the Record of Appeal upon the respondents within 14 from the date of this ruling.
 - iii. The applicant will have the costs of this application.

DATED AND DELIVERED AT MOMBASA THIS 7TH DAY OF OCTOBER, 2022

J. LESIIT

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

