



**Pamwhite Limited v Karomo & another (Suing as the Chairman and Secretary respectively of New Nyali Residents Association) & 4 others (Civil Application E047 of 2022) [2022] KECA 1376 (KLR) (16 December 2022) (Ruling)**

Neutral citation: [2022] KECA 1376 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT MOMBASA  
CIVIL APPLICATION E047 OF 2022  
P NYAMWEYA, JA  
DECEMBER 16, 2022**

**BETWEEN**

**PAMWHITE LIMITED ..... APPLICANT**

**AND**

**BENSON KAROMO & HUBERT SEINFERT (SUING AS THE CHAIRMAN AND SECRETARY RESPECTIVELY OF NEW NYALI RESIDENTS ASSOCIATION) ..... 1<sup>ST</sup> RESPONDENT**  
**IDEAL LOCATIONS LIMITED ..... 2<sup>ND</sup> RESPONDENT**  
**KIRKE LIMITED ..... 3<sup>RD</sup> RESPONDENT**  
**CONRAD PROPERTIES ..... 4<sup>TH</sup> RESPONDENT**  
**THE COUNTY GOVERNMENT OF MOMBASA ..... 5<sup>TH</sup> RESPONDENT**

*(An application for extension of time to file and serve a Notice of Appeal against the ruling of the Environment & Land Court at Mombasa (L. Naikuni J.) delivered on 5th May 2022 in ELC Case No. 219 of 2020)*

**RULING**

1. Pamwhite Limited, the Applicant herein, has filed an application by way of a Notice of Motion dated July 4, 2022, in which it seeks extension of time for filing and serving a Notice of Appeal, or in the alternative, that the Notice of Appeal lodged in Court on June 6, 2022 and June 7, 2022 be deemed as properly filed with leave of the Court. The application is supported by an affidavit sworn on even date by Pamela Auma Ogola, a director of the Applicant.
2. The grounds for the application are that the ruling on a preliminary objection filed by the Applicant against the 1<sup>st</sup> and 4<sup>th</sup> Respondents' suit in the Environment and Land Court at Mombasa (hereinafter



ELC) was reserved for April 6, 2022, but was not delivered on that day, and instead was delivered on May 5, 2022 without any prior notice of the new date of delivery. That the discovery of the said delivery was as a result of the Applicant engaging a new advocate to follow up on the ruling, who upon inquiry was informed of the delivery, and thereupon requested to be supplied with a copy of the ruling and typed proceedings by a letter dated 6<sup>th</sup> June 2022, and filed a Notice of Appeal on June 6, 2022 out of time. The Applicant annexed copies of the letter dated June 6, 2022 addressed to the Deputy Registrar of the ELC, the ruling delivered by the ELC on May 5, 2022, the Notice of Appeal dated June 6, 2022 and lodged on June 7, 2022, and a draft memorandum of appeal dated July 4, 2022.

3. None of the Respondents filed a response to the application. During the virtual hearing of the application held on September 21, 2022, learned counsel Ms. Chengo, holding brief for learned counsel Mr. Kenga appeared for the Applicant, and indicated that as the application was not opposed, she would rely on the grounds thereon and the affidavit filed in support thereof.

Learned counsel Mr. Oluga was appeared for the 1<sup>st</sup> to 4<sup>th</sup> Respondents, and sought to be given time to file a response. The application for adjournment was declined for reasons that Mr. Oluga had sufficient time to file a response, having confirmed that he was served with the application on August 24, 2022.

4. This application is therefore unopposed. The principles governing the exercise of the discretion to extend time under Rule 4 of the [Court of Appeal Rules](#) were well stated in the case of *Leo Sila Mutiso v Rose Hellen Wangare Mwangi* Civil Application No Nai 255 of 1997 (ur) as follows:

“It is now well stated 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”

5. Rule 75(2) of the [Court of Appeal Rules of 2010](#) in this respect required that a Notice of Appeal is lodged within fourteen days of the decision intended to be appealed against. The same requirement is now found in Rule 77 (2) of the [Court of Appeal Rules of 2022](#). It is not in dispute that the Applicant did not file a Notice of appeal within the required timelines, and the relevant period of delay that requires to be explained is the one between delivery of the impugned ruling on May 5, 2022, and the date of lodging of the Notice of Appeal on June 7, 2022.
6. The Applicant has explained that the delay of about eighteen (18) days arose from the lack of notice of the changed date of the delivery of ruling, and the time taken to engage an advocate to follow up on the ruling. I have considered the reasons for the delay, and it is notable that the fact of deferment of the impugned ruling and its later delivery without notice is not disputed. In addition, the Applicant has provided evidence of the intervening and consequent actions taken by its advocate, and I find them sufficient and adequate reasons for the delay, which is in the circumstances excusable and not inordinate.
7. On the chances of the intended appeal succeeding, all that I need to be persuaded at this stage is that the Applicant has demonstrated the existence of plausible grounds of appeal and not their merit. The counsel for the Applicant in this respect availed a draft memorandum of appeal, in which the issue of the jurisdiction of the ELC to hear an objection to development permission in the first instance is raised as a ground, which in my view requires further argument and consideration.



8. I therefore find that the Applicant merits the exercise of this Court's discretion for the above stated reasons. I accordingly allow the Applicant's Notice of Motion application dated July 4, 2022, on the terms that the Applicant is granted leave to file and serve the Notice of Appeal dated June 6, 2022 and lodged on June 7, 2022 out of time, and the said Notice of Appeal is accordingly deemed to have been properly filed and served. There shall be no order as to the costs of the application.
9. Orders accordingly.

**DATED AND DELIVERED AT MOMBASA THIS 16TH DAY OF DECEMBER 2022.**

**P. NYAMWEYA**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**

