



**Munyori v Kanyua (Suing as the legal representative of Maria Wambui Kanyua) (Civil Application E025 of 2022) [2022] KECA 1383 (KLR) (15 December 2022) (Ruling)**

Neutral citation: [2022] KECA 1383 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CIVIL APPLICATION E025 OF 2022  
F SICHALE, JA  
DECEMBER 15, 2022**

**BETWEEN**

**MARY WAMBUI MUNYORI ..... APPLICANT**

**AND**

**GABRIEL NJUGUNA KANYUA (SUING AS THE LEGAL REPRESENTATIVE OF MARIA WAMBUI KANYUA) ..... RESPONDENT**

*(An Application for extension of time to file Record of Appeal against the judgment of the ELC at Nyabururu (Angima, J.) dated 24th June 2021 IN ELC Case No. 17 of 2019)*

**RULING**

- 1 Mary Wambui Munyori (the applicant herein), has *vide* a motion dated May 25, 2022, invoked the jurisdiction of this court pursuant to the provisions of rules 4, 42 and 43 seeking the following orders:
  1. That this honourable court be pleased to extend time for filing the record of appeal against the judgment of Justice YM Angima Environment & Land Court Appeal No 17 of 2019, *Mary Wambui Munyori v Maria Wambui Kanyua*.
  2. That costs of the application be provided.”
- 3 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 on June 24, 2021, Angima, J dismissed the suit giving rise to the instant motion and that being dissatisfied with the aforesaid judgment, she subsequently filed a notice of appeal on July 1, 2021 and by a letter dated June 25, 2021, she applied for certified copy of the proceedings before the environment and land court but inadvertently failed to serve the respondent with a copy of the said letter.



- 4 That, she was supplied with certified copy of the proceedings and judgment on May 17, 2022 and that the delay in filing the record of appeal was occasioned by the time taken for preparation of certified copy of the proceedings and that further she had an arguable appeal with high chances of success.
- 5 It was submitted for the applicant that the current application was filed timeously and that there was no inordinate delay and that she had an arguable appeal with high chances of success and further the decree had not been executed and that as such the respondent would suffer no prejudice.
- 6 On October 11, 2022, the respondent wrote to court intimating that they did not wish to respond to the application and urged the court to exercise its discretion and determine the matter on the basis of materials presented by the applicant.
- 7 I have carefully considered the motion, the grounds thereof, the supporting affidavit, the applicant's submissions 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.
- 8 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 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.
- 9 In the instant case, the impugned judgment was delivered on June 24, 2021. The applicant subsequently lodged a notice of appeal on July 1, 2021, which was well within the stipulated timelines whereas the instant motion is dated May 25, 2022. There has therefore been a delay of about 11 months from the date of the judgment till around May 25, 2022, when the instant motion was filed which delay is no doubt inordinate.
- 10 Regarding the reasons for the delay, the applicant contends that the same was occasioned by the time taken for preparation of certified copies of the proceedings and that he was supplied with the same on May 17, 2022. I have perused the record and indeed there is a Certificate of Delay showing that the proceedings became ready for collection on May 17, 2022. This delay is certainly not attributable to the applicant and the instant motion is dated May 25, 2022, which is 8 days after the applicant received certified copies of the proceedings.
- 11 From the circumstances of this case, and for the above reasons, I am satisfied with the reasons given for the delay and I find the same to be plausible as the delay herein has been explained to the satisfaction of this court.
- 12 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. However, I have perused the annexed memorandum of appeal and I am satisfied that the applicant has an arguable appeal worthy of consideration by the court.
- 13 Regarding prejudice, the respondent has not even attempted to demonstrate the prejudice he would suffer if this application were to be allowed and he has not even opposed the motion. Consequently, I am satisfied that no prejudice would be suffered by the respondent if the instant motion is allowed.
- 14 The upshot of the foregoing is that the applicant's motion dated May 25, 2022, is merited and the same is hereby allowed. The applicant shall file and serve the record of appeal within 45 days from the date of this ruling failure to which these orders shall stand vacated.
- 15 The costs of this motion shall abide the outcome of the intended appeal. Orders accordingly.



DATED AND DELIVERED AT NAKURU THIS 15<sup>TH</sup> DAY OF DECEMBER, 2022.

F SICHALE

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JUDGE OF APPEAL

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

*Signed*

**DEPUTY REGISTRAR**

