



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ngari v Ngari (Civil Application 151A of 2018)  
[2021] KECA 27 (KLR) (23 September 2021) (Ruling)**

Neutral citation: [2021] KECA 27 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION 151A OF 2018  
DK MUSINGA, JA  
SEPTEMBER 23, 2021**

**BETWEEN**

**ALLAN NYAGA GATHURI NGARI ..... APPLICANT**

**AND**

**GATHURI NGARI ..... RESPONDENT**

*(Being an application for extension of time to file an appeal from the Judgment and Decree of the Environment and Land Court at Embu (Y.M. Angima, J.) dated 7th December 2017 in ELC Case No. 169 of 2015 Formerly Embu Civil Case No. 14 of 1983.)*

**RULING**

1. Before me is the applicant's notice of motion dated 3rd December 2018 that is brought under rule 4 of this Court's rules. The applicant seeks leave for extension of time to appeal against the judgment in Embu Environment and Land Court ELC No. 169 of 2015 that was delivered on 9th December 2017.
2. In his affidavit in support of the application, the applicant states that he lodged a notice of appeal against the said decision on 19th December 2017. On the previous day, his advocate has requested for certified copies of proceedings and judgment for purposes of filing an appeal but a copy of the letter bespeaking the proceedings was not delivered to the respondent's advocates.
3. The applicant's advocates received the certified copies of the proceedings and judgment on 18th October 2018. A certificate of delay to that effect was issued by the trial court's Deputy Registrar.
4. The respondent opposed the aforesaid application. He stated that the dispute that gave rise to this appeal had been in Court since 1983. He further stated that although the appellant filed a notice of appeal on 19th December 2017, he did not serve him with the letter bespeaking proceedings until the respondent sought to execute the judgment around July 2018 when the applicant filed an application for stay of execution and attached to his application the notice of appeal together with the letter requesting for proceedings.



5. The respondent further stated on 7th February 2019, the trial court granted the applicant stay of execution for a period of 2 years to enable him prosecute the intended appeal but the two years' period have since expired. In the respondent's view, the applicant is guilty of laches and is therefore not deserving of this Court's discretion.
6. I have considered the application and the affidavit on record. The applicant did not file any submissions but the respondent filed his submissions dated 11th May 2021. The principles that guide this Court in an application of this nature are well settled. In *Leo Sila Mutiso vs Rose Hellen Wangari Mwangi*, this Court held that the factors that the Court takes into consideration include the length of the delay; the reason of the delay; possibly the chances of success of the intended appeal and the degree of prejudice that may be occasioned to the respondent if the application is granted.
7. The impugned judgment was delivered on 7th December 2017 and the applicant promptly applied for certified copies of the proceedings and the judgment. However, the applicant did not furnish the respondent with a copy of the letter bespeaking proceedings. The applicant was supplied with the typed proceedings and judgment on 18th October 2018 and a certificate of delay to that effect was issued. However, the applicant having failed to lodge his appeal within 60 days of the notice of appeal as stipulated under rule 82 of this Court's Rules cannot benefit from the proviso to the aforesaid rule for the simple reason that he did not copy the letter bespeaking proceedings to the respondent's advocates. Rule 82 (2) of this Court's Rules is clear that:

“An appellant shall not be entitled to rely on the proviso to sub-rule (1) unless his application for such copy was in writing and a copy of it was served upon the respondent.”
8. Secondly, the applicant, having being granted a two year stay of execution of the judgment by the trial court did not do much towards the intended appeal. In the circumstances therefore, I find that there has been inordinate delay that has not been well explained. Furthermore, the applicant did not annex to his application a draft memorandum of appeal setting out the intended grounds of appeal and neither did he disclose the intended grounds in his affidavit in support of the application.
9. The dispute between the parties has been lingering in court for nearly 4 decades and the litigation must come to an end. I find that the applicant's application wanting in merit and hereby dismiss the same with costs to the respondents.

**DATED AND DELIVERED AT NAIROBI THIS 23RD DAY OF SEPTEMBER, 2021.**

**D. K. MUSINGA, (P)**

.....

**JUDGE OF APPEAL**

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

Signed

DEPUTY REGISTRAR

