



**Ntilalei & 3 others v Njoroge & another (Civil Application
E093 of 2021) [2021] KECA 21 (KLR) (23 September 2021) (Ruling)**

Neutral citation: [2021] KECA 21 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E093 OF 2021
DK MUSINGA, JA
SEPTEMBER 23, 2021**

BETWEEN

**LEMUKATA OLE NTILALEI 1ST APPLICANT
NKASHEMA OLE SADURU 2ND APPLICANT
GIDEON LAMUTAKA 3RD APPLICANT
JACOB MALIT 4TH APPLICANT**

AND

**DANIEL NG'ANG'A NJOROGE 1ST RESPONDENT
JAMES GITEMA NJUGUNA 2ND RESPONDENT**

*(Being an application for extension of time to appeal against the
Judgment of the Environment and Land Court at Kajiado (C. Ochieng,
J.) delivered on 19th March 2019 in E.L.C Case No. 685 of 2017 (OS).)*

RULING

1. The applicant's notice of motion dated 22nd March 2021 seeks extension of time to appeal against the judgment of the Environment and Land Court (ELC) delivered on 19th March 2019 in Kajiado ELC Case No. 685 of 2017 (OS). The applicants also seek to have the notice of appeal that they had filed without leave deemed as duly filed.
2. In the supporting affidavit sworn by the 1st applicant, he states that the trial court in its impugned judgment ordered the revocation of land parcels Nos. Kajiado/Kitengela/6137; 23949; 23950; 23951; 23952 and 23953 to revert to title No. Kajiado/Kitengela/23953; that the respondents are entitled to 30 acres hived off title No. Kajiado/Kitengela/61371 and that the Land Registrar, Kajiado to register the respondents as the absolute proprietors of their respective portions of 20 and 10 acres respectively of title No. Kajiado/Kitengela/61371.



3. The 1st applicant further stated that due to their nomadic lifestyles the applicants had migrated in search of pastures owing to the delayed rains and as such their advocate was unable to reach them by telephone to notify them about the judgment. By the time they learned about the delivery of the judgment the 14 days' period of filing a notice of appeal had expired. That notwithstanding, their advocates, Kariuki E. & Company filed without leave of the court a notice of appeal dated 22nd March 2021.
4. The applicants believe that their intended appeal has good chances of success and filed a draft memorandum of appeal showing the main grounds of appeal that are intended to be argued.
5. The respondents opposed the application. In their replying affidavit sworn by the 1st respondent, the respondents stated that the dispute between them and the applicants dates back to 8th November 2000 when the magistrates court at Kajiado issued an order that they be given the portion of land that they had paid for in full from the applicants; that the said orders were never appealed against for over 21 years; that eventually they filed a suit in Machakos ELC Case No. 219 of 2012 that was eventually transferred to Kajiado as ELC Case No. 685 of 2017 which was decided in their favour as stated by the applicants. The respondents further argued that there has been inordinate delay in filing the notice of appeal and the reason advanced for the delay is not satisfactory. They therefore urged this Court to dismiss the application.
6. I have considered the application, the affidavits on record as well as written submissions by the parties. The principles upon which this Court determines an application for extension of time under rule 4 of this Court's Rules are well settled. The Court, may on such terms as it thinks just grant extension of time. The factors that the court takes into consideration includes the length of the delay; the reason for the delay; possibly the chances of success of the intended appeal and the degree of prejudices that may be occasioned to the respondent if the application is granted. See *Charles Karanja Kiiru v Charles Gitinji Muigwa* [2017] eKLR and *Fakir Mohammed v Joseph Mugambi & 2 others* [2005] eKLR.
7. The impugned judgment was delivered on 19th March 2019 but the notice of appeal was not filed until 22nd March 2021. The delay of nearly two years is by all means inordinate. That delay was also not properly explained. The applicant's contention is that they had migrated in such of pastures to some places far away from their homes and therefore their advocate was unable to reach them. I do not find that reason satisfactory. It was upon the applicants to get in touch with their advocates and enquire about the fate of their case.
8. Regarding the chances of success of the intended appeal, having perused the trial court's judgment and taking into account that for a period of nearly 21 years the applicants had not appealed against the magistrate's court order in respect of the suit land that was issued in favour of the respondents, I entertain grave doubts whether the intended appeal has any chances of success.
9. Having found that the delay herein was inordinate and the same has not been well explained by the applicants, I need not consider the issue of any likely prejudice that may be occasioned to the respondents if I allowed the application.
10. I find the applicants' notice of motion bereft of merit and dismiss it with costs to the respondents

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

D. K. MUSINGA, (P)

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JUDGE OF APPEAL



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

Signed

DEPUTY REGISTRAR

