



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Onyango v Mungai (Civil Application E103 of 2021)
[2021] KECA 20 (KLR) (23 September 2021) (Ruling)**

Neutral citation: [2021] KECA 20 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E103 OF 2021
DK MUSINGA, JA
SEPTEMBER 23, 2021**

BETWEEN

PETER OUMA ONYANGO APPLICANT

AND

GEOFFREY KOMU MUNGAI RESPONDENT

(Being an application for leave to extend time limited for applying for leave to appeal from the Ruling of the High Court of Kenya at Nairobi (Mativo, J.) delivered on 24th March 2021 in H.C. Misc. Appl. No. E1219 of 2020)

RULING

- 1 The applicant's notice of motion dated 9th April 2021 seeks leave to appeal from the ruling of the High Court of Kenya at Nairobi in Misc. Appl. No. E1219 of 2020 delivered by Mativo, J. on 24th March 2021.
- 2 The application is supported by an affidavit sworn by Jeff Kimata, the applicant's advocate. He states that the applicant was unable to lodge his application for leave to appeal from the aforesaid ruling within the prescribed period due to technical problems that he (the advocate) encountered in filing the application on the Judiciary-filing platform that was only resolved remotely by members of the Judiciary IT Department after expiry of 14 days.
- 3 The advocate had notified the Deputy Registrar of this Court of the technical problems and sought guidance. A copy of the short message from the applicant's advocate to the Deputy Registrar was annexed to the supporting affidavit.
- 4 The advocate further explained that the applicant preferred to seek leave to appeal from this Court instead of seeking leave from the trial judge because the applicant was unable to orally apply for leave at the time when the ruling was made as it was delivered electronically.



- 5 The applicant through his advocate set out several proposed grounds of appeal in his affidavit in support of the application. Lastly, the applicant states that the respondent will not suffer any prejudice if the application is allowed and therefore urges this Court to grant the orders sought.
- 6 The respondent opposed the application through an affidavit sworn by his advocate, Mr. Mutiso Makau. The advocate argued that the applicant had not advanced any reasonable ground for the failure to lodge the intended notice of appeal in time. He argued that the application ought to have been presented in the first instance before the trial court in line with order 43, rule 1 (3) of the Civil Procedure Rules, 2010, 2010.
- 7 I have considered the application; the affidavit sworn by the parties' advocates and the submissions on record. The principles that guide this Court in its determination of an application for extension of time under rule 4 of this Court's Rules are well settled. The court considers inter alia the length of the delay; the reason for the delay; possibly the chances of success of the intended appeal and the degree of prejudice that would be occasioned to the respondents if the application is granted. See Fakir Mohammed v Joseph Mugambi & 2 Others [2005] eKLR.
- 8 The period of delay in this matter is just about 2 days. That delay is not inordinate. The delay has also been well explained by the applicant. The applicant's advocate communication with this Court's Deputy Registrar says it all. The applicant cannot therefore be faulted at all.
- 9 Considering the proposed grounds of appeal as shown in the applicant's affidavit, it is evident that the intended appeal is not frivolous.
- 10 Lastly, the applicant intends to exercise his constitutional right of appeal and the same ought not to be denied if the applicant is not to be blamed for the delay. The respondent will not be prejudiced by the grant of the leave sought.
- 11 I am satisfied that the application before me is merited and I hereby allow the same. I consequently direct that the notice of appeal be filed and served within 14 days from the date of delivery of this ruling. The costs of the application shall be in the appeal.

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

