



REPUBLIC OF KENYA



KENYA LAW
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**Samuel v Sikanga (Civil Application 24 of 2021)
[2021] KECA 58 (KLR) (8 October 2021) (Ruling)**

Neutral citation: [2021] KECA 58 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT ELDORET
CIVIL APPLICATION 24 OF 2021
F SICHALE, JA
OCTOBER 8, 2021**

BETWEEN

SIRENGO MOHAMMED SAMUEL APPLICANT

AND

NELSON KAKAI SIKANGA RESPONDENT

(Being an application for extension of time within which to lodge an appeal against the Judgment of the Environment and Land Court at Bungoma delivered on 12th November 2020 by Honourable Justice Boaz N. Olao J. in Bungoma ELC No. 171 of 2013)

RULING

1. On 20th May, 2021, the motion dated 24th February, 2021, filed by Sirengo Mohamed Samuel (the applicant) came up before me for hearing “on written submissions and no appearance for counsel”. The motion is brought under the provisions of Section 3A and 3B of the *Appellate Jurisdiction Act* CAP 9, Rule 4,75, 82, 83 and 86 of the *Court of Appeal Rules, 2010* in which he seeks the following orders:
 1. THAT the time within which to file a Notice of Appeal be extended and leave be granted and Notice filed on 23rd February 2021 be deemed duly filed or have it lodged out of time.
 2. THAT time within which to file and serve the Record of Appeal and Memorandum of Appeal be extended and leave be and is hereby granted to lodge them out of time.
 3. THAT costs incidental to this Application do abide in the outcome of the intended Appeal.”
2. The motion is supported by the grounds on the face of the motion and an affidavit sworn by the applicant on 23rd February 2021. He deponed that the case having been heard in the superior Court,



judgment was slated for 12th November 2020; that he attended court on 12th November, 2020 and the parties were informed that judgment would be delivered electronically; that he continued to follow up with his advocate to no avail; that he was therefore surprised when his advocate was served with a decree for his approval and that upon inquiry at the registry, he found a copy of the judgment which was not in his favour and he immediately lodged the current application for leave.

3. In the applicant's submissions dated 19th May, 2021, the depositions in the supporting affidavit were reiterated.
4. I have considered the motion together with the grounds before me, the affidavit and the submissions on behalf of the applicant. The respondent did not file a replying affidavit in opposition to the motion.
5. The applicant's motion is brought, under Rule 4 of this Court's Rules. The said Rule provides:

4. Extension of time

The Court may, on such terms as it thinks just, by order extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended."

6. the decision of *Abdul Azizi Ngoma vrs. Mungai Mathayo* [1976] Kenya LR 61, 62, this Court held:

"We would like to state once again that this court's discretion to extend time under rule 4 only comes into existence after 'sufficient reason' for extending time has been established and it is only then that other considerations such as the absence of any prejudice and the prospects or otherwise of success in the appeal can be considered"

7. In my view, the Covid 19 Pandemic has brought to the fore certain challenges. In this matter, the Court, taking advantage of technology, advised the parties on the judgment day that the judgment was to be transmitted electronically. This meant that no appointed date and /or time was given but the parties were to continuously check on the net whether the judgment had been dispatched. This may be a herculean task for litigants and to some extent, counsel who are not technologically equipped.
8. I also note that the applicant moved with speed upon learning of the judgment, although he did not provide the date and time when he learnt of the judgment. However, it is worthy of note that judgment was delivered electronically on 12th November, 2020 and the motion herein was filed on 23rd February, 2021. In my view, the delay was not inordinate.
9. I allow the motion in terms of prayer (1) of the motion. I further direct that the appeal be filed within 60 days from the date of this ruling. It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 8TH DAY OF OCTOBER, 2021.

F. SICHALE

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR

