



REPUBLIC OF KENYA



**KENYA LAW**  
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**About & 18 others v Khan (Civil Appeal (Application)  
20 of 2020) [2021] KECA 121 (KLR) (5 November 2021) (Ruling)**

Neutral citation: [2021] KECA 121 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT MALINDI  
CIVIL APPEAL (APPLICATION) 20 OF 2020  
SG KAIRU, JA  
NOVEMBER 5, 2021**

**BETWEEN**

<b>ALI DIDI ABOUD .....</b>	<b>1<sup>ST</sup> APPLICANT</b>
<b>WATAMU WORSHIP CENTER (G.O.C .....</b>	<b>2<sup>ND</sup> APPLICANT</b>
<b>ATHMAN SHAIBU SHOSHI .....</b>	<b>3<sup>RD</sup> APPLICANT</b>
<b>A.O. ATHMAN .....</b>	<b>4<sup>TH</sup> APPLICANT</b>
<b>MULKI HASSAN .....</b>	<b>5<sup>TH</sup> APPLICANT</b>
<b>MOHAMED HERI .....</b>	<b>6<sup>TH</sup> APPLICANT</b>
<b>MWANAISHA MOHAMED .....</b>	<b>7<sup>TH</sup> APPLICANT</b>
<b>OMAR FUNDI .....</b>	<b>8<sup>TH</sup> APPLICANT</b>
<b>HASSAN ABDULLAH .....</b>	<b>9<sup>TH</sup> APPLICANT</b>
<b>JACKLINE MWANIA .....</b>	<b>10<sup>TH</sup> APPLICANT</b>
<b>ANNASTACIA KAHAMA .....</b>	<b>11<sup>TH</sup> APPLICANT</b>
<b>HILDAGAD GASHAMBA .....</b>	<b>12<sup>TH</sup> APPLICANT</b>
<b>JOICYE NYOKABI .....</b>	<b>13<sup>TH</sup> APPLICANT</b>
<b>BWANA FAE USTAHIDI .....</b>	<b>14<sup>TH</sup> APPLICANT</b>
<b>EMMANUEL CHARO TINGA .....</b>	<b>15<sup>TH</sup> APPLICANT</b>
<b>HELEN MURUNGI .....</b>	<b>16<sup>TH</sup> APPLICANT</b>
<b>HELEN MAKEBA .....</b>	<b>17<sup>TH</sup> APPLICANT</b>
<b>SAIDI BWANA .....</b>	<b>18<sup>TH</sup> APPLICANT</b>
<b>BARAKA KABERIA .....</b>	<b>19<sup>TH</sup> APPLICANT</b>



AND

MOHAMED SADEEEQUE KHAN ..... RESPONDENT

*(An application for extension of time to file and serve a record of appeal out of time against the Judgment/Decree of the Environment & Land Court at Malindi (Olola, J.) delivered on 18th September 2020 in ELC Petition No. 7 of 2013)*

RULING

1. By application dated 21<sup>st</sup> December 2020, the applicants seek orders for extension of time for lodging and service of a record of appeal from the judgment of the Environment and Land Court in ELC Petition No. 7 of 2013 between the parties hereto.
2. As stated by the Supreme Court in *Nicholas Kiptoo Arap Korir Salat vs. IEBC & 7 others, Supreme Court Application No. 16 of 2014 [2014] eKLR* extension of time is not a right of a party but an equitable remedy available to a deserving party at the discretion of the court; that the party seeking extension of time has the burden to lay a basis to the satisfaction of the court; that extension of time is a consideration on a case to case basis; that delay should be explained to the satisfaction of the court; whether there will be prejudice suffered by the respondents if the extension is granted; and whether the application is brought without undue delay.
3. In his affidavit in support of the application, Athman Shaibu Shossi the 3<sup>rd</sup> applicant deposes that following the impugned judgment on 18<sup>th</sup> September 2020, the applicants' advocates promptly applied for a copy of proceedings and filed a notice of appeal on 25<sup>th</sup> September 2020 and on 29<sup>th</sup> September 2020 respectively; that the typed proceedings were supplied on 4<sup>th</sup> December 2020 and a certificate of delay issued on that date; that the record of appeal, being Civil Appeal No. E021 of 2021 was filed alongside the present application. The applicants pray that the record of appeal be deemed as properly filed.
4. The certificate of delay exhibited appears incomplete and is not helpful at all as there is no indication therein the period that was required for the preparation of the proceedings and neither does it certify when the proceedings were supplied to the applicant's counsel. It is perhaps the defect in the certificate of delay that necessitated this application, which would have been unnecessary with a proper certificate of delay having regard to the proviso to Rule 82 of the *Court of Appeal Rules*.
5. In any event, I allow the application in terms of prayers 2, 3 and 4 of the application. The applicant shall serve the record of appeal on the respondent with 7 days of delivery of this ruling. Costs of the application shall be in the appeal.

**Dated and delivered at Mombasa this 5<sup>th</sup> day of November, 2021.**

**S. GATEMBU KAIRU, FCIArb**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**

