



**Njuru v Mwangi & another (Civil Application 55 of 2019)
[2021] KECA 176 (KLR) (5 November 2021) (Ruling)**

Neutral citation: [2021] KECA 176 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION 55 OF 2019
DK MUSINGA, JA
NOVEMBER 5, 2021**

BETWEEN

JOSEPH NJUGUNA NJURU APPLICANT

AND

JASON NJURU MWANGI 1ST RESPONDENT

JANE WANJIRU NJUGUNA 2ND RESPONDENT

(Being an application for extension of time to file a notice of appeal from the Ruling of the Environment and Land Court of Kenya at Murang'a (Kemei, J.) dated 2nd July 2018 in E.L.C No. 295 of 2017)

RULING

1. The applicant's notice of motion dated 18th April 2019 and brought under rule 4 of this Court's Rules seeks extension of time to enable him file a notice of appeal out of time. The ruling sought to be appealed against, ELC No. 295 of 2017, was delivered on 2nd July 2018 by Kemei, J.
2. In his affidavit in support of the application, the applicant simply states that when he was explained the import of the ruling he instructed his advocate to appeal against the same, but he was advised that the time for lodging an appeal had expired, hence this application.
3. The applicant does not state when he became aware of the judgment, nor does he state why he did not lodge an appeal in time. He only states that he believes his intended appeal has a chance of success and seeks to rely on a draft memorandum of appeal annexed to his affidavit.
4. The respondents opposed the application. They stated, inter alia, that in the application that gave rise to the impugned ruling, the applicant was seeking joinder into some other proceedings; that the application was dismissed vide a ruling delivered on 2nd September 2018 in the presence of counsel for both parties; that the suit which the applicant was seeking joinder to, was heard and determined on



27th February 2020; that in the circumstances the intended appeal has absolutely no chance of success and that the application is devoid of merit.

5. This application was disposed of by way of written submissions, which I have carefully considered. The principles that guide this Court in exercising its discretion under rule 4 of the *Court's Rules* are well settled. *See Muringa Company Limited v Archdiocese of Nairobi Registered Trustees [2020] eKLR.* They include the length of the delay; the reason(s) of the delay; (possibly) the chances of success of the intended appeal; and the degree of prejudice that may be occasioned to the respondents if the application is granted.
6. In this application the impugned ruling was delivered on 2nd July 2018 in the presence of counsel for both parties. If the applicant intended to file an appeal from the said ruling, he ought to have done so within fourteen (14) days from the date of its delivery. The applicant lodged a notice of appeal without leave on 30th October 2018, 105 days out of time. The delay was inordinate and has not been explained at all.
7. Where no effort has been made to explain such inordinate delay, the Court has no basis of exercising its discretion in favour of an applicant. Every delay must be properly explained by an applicant. See *Rael Munyaka & 6 others v Waitaluk Land Disputes Tribunal & 3 Others [2007] eKLR.* In the circumstances, it would be superfluous to consider whether the intended appeal has any chances of success, save to state that the suit that the applicant was seeking joinder to, having been heard and disposed of on its merit, it is doubtful whether the intended appeal has any chance of success.
8. I find this application totally devoid of merit and dismiss it with costs to the respondents.

DATED AND DELIVERED AT NAIROBI THIS 5TH DAY OF NOVEMBER, 2021.

D. K. MUSINGA, (P).

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR

