



REPUBLIC OF KENYA



Gichana v Wakenya Pamoja Sacco Society Limited & another (Miscellaneous Application E119 of 2021) [2021] KECA 321 (KLR) (17 December 2021) (Ruling)

Neutral citation: [2021] KECA 321 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
MISCELLANEOUS APPLICATION E119 OF 2021
A MBOGHOLI-MSAGHA, JA
DECEMBER 17, 2021**

BETWEEN

YUNES MORAA GICHANA APPLICANT

AND

WAKENYA PAMOJA SACCO SOCIETY LIMITED 1ST RESPONDENT

COOPERATIVE BANK OF KENYA 2ND RESPONDENT

(An application for extension of time to file notice and record of appeal out of time in an intended appeal against a judgment of the High Court of Kenya at Kisumu (Nduma,J) dated 17th December, 2020 In ELRC No. 367 OF 2011)

RULING

1. By an application dated 17th June, 2021 the applicant seeks leave to file Notice of Appeal and record of appeal out of time citing rule 4 of the [Court of Appeal Rules](#). The judgment in this matter was delivered on 17th December, 2020 and according to the supporting affidavit, the judgment was delivered in the absence of the applicant and without notice. It was not until may 21, 2021 that the judgment was read and explained to her by her advocate who had written a letter dated 14th April, 2021 inquiring about the judgement.
2. It is the applicant's case that due to lock down in Nairobi following covid pandemic she was unable to give proper and timely instructions to her advocates which she eventually did on 4th June, 2021.
3. The orders sought by the applicant are discretionary and supposed to consider whether or not the delay if inordinate has been explained and whether or not the applicant has an arguable appeal. -see *Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi* Civil Application No. Nai 251 of 1997 and *Mwangi vs. Kenya Airways Limited* (2003) KLR 486.



4. There appears to be a reasonable explanation for the delay which may be acceptable to the court. However looking at the original prayers advanced by the applicant before the trial court, and relating the same to the awards made there is a marked departure in the draft Memorandum of Appeal presented by the applicant.
5. Available evidence in the records is that the applicant was adequately compensated. She may not be allowed to litigate her case afresh on appeal. There is no arguable appeal in this matter and therefore the application is declined with costs to the respondent.

DATED AND DELIVERED AT NAIROBI THIS 17TH DAY OF DECEMBER, 2021

A. MBOGHOLI MSAGHA

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

