



**Lugalia v Onyino & 5 others (Civil Application E123 of 2021)
[2021] KECA 314 (KLR) (17 December 2021) (Ruling)**

Neutral citation: [2021] KECA 314 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT ELDORET
CIVIL APPLICATION E123 OF 2021
A MBOGHOLI-MSAGHA, JA
DECEMBER 17, 2021**

BETWEEN

EPHRAIM GODEKA LUGALIA APPLICANT

AND

JOHNSHON ONYINO 1ST RESPONDENT

SAMSON LUGALIA 2ND RESPONDENT

STEPHEN BANANGA 3RD RESPONDENT

EUNICE ANDEYO 4TH RESPONDENT

PHOEPHE VUGUTSA 5TH RESPONDENT

MARY AYIERA 6TH 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 Environment and Land Court at Kitale (Njoroge J) dated 13th November, 2019 in (Land Case No. 129 of 2016)

RULING

1. This is an application under Rule 4 of the Court of Appeal Rules for extension of time to file and serve the notice of appeal and the record of appeal from the judgment of the Superior court dated 13th November, 2019. The application is supported by an affidavit sworn by the applicant.
2. The applicant has given a chronology of events in his affidavit to explain the delay in filing the notice and the record of appeal. The thrust of his affidavit is that he is an old person aged 89 years old, and when the judgment was delivered another counsel was holding brief on behalf of his counsel on record. It was not until August 2020 when he learnt of the judgment and instructed his counsel to file



this application. However, due to restricted movements based on the Covid pandemic he could not physically move considering his old age and disability.

3. The application is opposed and I have considered the material placed before me. There has been a delay of about two years from the time the judgment was delivered by the Superior court. For the applicant to succeed he must demonstrate that the delay is not inordinate and if it is the same has been explained. It must also be demonstrated that there is an arguable appeal and that there is no prejudice that shall be visited upon the other party if the application is granted – see *Leo Sila Mutiso v Rose Hellen Wangari Mwangi Civil Application No. Nai 251 of 1997*.
4. In the instant application the delay appears inordinate. However, I am persuaded that the applicant has given plausible reasons for the same. Further, going by the draft memorandum of appeal the applicant has raised issue with the granting of prayers not sought by the respondents and in my view that presents an arguable appeal.
5. This is a land dispute which the trial court described as “complex”. The respondents are in possession of the contested piece of land. There is no prejudice therefore that shall be occasioned if the application is allowed.
6. I am inclined to allow the application as prayed and order that the applicant shall file and serve the notice of appeal within 7 days of today, followed by the record of appeal within sixty days thereafter. In default the application shall stand dismissed. The respondents however, shall have the costs of this application.

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

DEPUTY REGISTRAR

