



REPUBLIC OF KENYA



**Mugo v Republic & 5 others (Civil Application E045 of 2021)
[2021] KECA 356 (KLR) (17 December 2021) (Ruling)**

Neutral citation: [2021] KECA 356 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E045 OF 2021
DK MUSINGA, JA
DECEMBER 17, 2021
IN THE MATTER OF AN INTENDED APPEAL**

BETWEEN

EFUREITH IRIMA MUGO APPLICANT

AND

REPUBLIC 1ST RESPONDENT

MINISTER FOR LAND & SETTLEMENT 2ND RESPONDENT

DISTRICT COMMISSIONER MBEERE NORTH 3RD RESPONDENT

JOHN NGARE MWANIKI 4TH RESPONDENT

D. EUTON NJUKI 5TH RESPONDENT

KAHARERI BURI KARUGU 6TH RESPONDENT

(An application for extension of time to file and serve the record of appeal out of time in an intended appeal from a judgment of the Environment and Land Court at Embu (Y. Angima, J.) delivered on 19th December 2019) in ELC JR No. 32 of 2015)

RULING

1. The Applicant's Notice of Motion brought under rule 4 of this Courts Rules seeks extension of time to file and serve the notice of appeal out of time. In her affidavit in support of the application, the applicant depones, inter alia, that on 3rd October, 2012 the 6th respondent filed a Judicial Review application at Embu in ELC JR no. 32 of 2015 seeking an order of certiotari to quash the proceedings and decision of the Minister and or District Commissioner, Mbeere North in Appeal Cases Nos. 206/99 and 228/04 dated 20th December 2012.



2. On 19th December, 2019, the trial court (Angima, J) delivered a judgment quashing the decision of the Minister as sought. Being aggrieved by that decision, the applicant instructed her advocate to file a Notice of Appeal and to apply for certified copies of the proceedings and judgment with a view to filing an appeal. The notice of appeal was lodged on 20th December, 2019 but was served on 3rd February 2020. The proceedings were obtained on 29th April, 2020, and the record of appeal was filed on 2nd June, 2020.
3. By a motion dated 12th June 2020, the 6th respondent filed an application to strike out the notice of appeal as well as the record of appeal for the reason that the same were filed and served out of time. The application was struck out vide this Court's ruling delivered on 23rd April, 2021.
4. In this application, the applicant states that the delay in the filing and service of the notice of appeal was occasioned by factors beyond her control. She states that her advocates inadvertently failed to serve the notice of appeal and the delay in filing the record of appeal was caused by the scaling down of the Court's operations due to the Covid-19 pandemic. She urges this court to grant extension of time, saying that the intended appeal is not only arguable but has high prospects of success for reasons that she has set out in her affidavit.
5. The 6th respondent opposed the application by a replying affidavit sworn on 22nd June, 2021. The 6th respondent stated, inter alia, that on 13th May, 2020 the applicant obtained the certificate of delay which stated that the time taken to prepare and supply the certified copies of proceedings and judgment was from 19th December, 2020 to 13th March, 2020. However, the applicant paid the balance of the court fees on 28th April, 2020 and collected the certified documents on 29th April, 2020, 47 days after they were ready for collection. That notwithstanding, the applicant filed the memorandum and record of appeal on 2nd June, 2020.
6. The 6th respondent further stated that in the ruling delivered by this Court on 23rd April, 2021 the reasons advanced by the applicant to justify the delay were found insufficient.
7. Regarding the possible chances of the intended appeal, the 6th respondent stated that there are fresh matters between the applicant and third parties over resultant subdivisions of the land in dispute that are pending before Siakago Principal Magistrates' Court and there is an appeal between the applicant and 3rd parties before Embu Environment and Land Court, being Civil Appeal No. 16 of 2021. Besides, execution of the impugned judgment has already been done and that is not disputed by the applicant in view of her Notice of Motion, dated 9th November, 2020 in Nyeri Court of Appeal Civil Appeal No. 67 of 2020.
8. For all these reasons, the 6th respondent urged this Court to dismiss the applicant's application.
9. I have considered the application and the submissions filed by the parties. The principles that guide this Court in an application of this nature are well established and have been restated time and again in various decisions of the Court, among them *Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi [1999] 2EA 231*. The delay in service of the notice of appeal and filing of the record of appeal has not been well explained. The impugned judgment was delivered on 19th December, 2019 and the notice of appeal was lodged on 20th December, 2019. Although the same was to be served within 7 days thereafter, it was not served until 3rd February, 2020. The in- advertence that occasioned that delay was not explained.
10. Secondly, even after the proceedings were ready for collection the applicant took 47 days before she paid the balance of the court fees in order to procure the same. That delay was also not also explained.



11. In *Andrew Kiplangat Chemaringo vs. Paul Kipkorir Kibet [2018] eKLR*, this Court held that a plausible and satisfactory explanation for delay is the key that unlocks the Courts' flow of its discretionary favour. Without a sufficient explanation for the delay, the Court cannot extend time in favour of an applicant to file an appeal out of time.
12. Having so held, I need not consider the possible chances of the intended appeal. But even if I were to do so, the factors raised by the 6th respondent in her replying affidavit, and which have not been controverted by the applicant, indicate that the trial court's judgment has since been executed and various third parties are also involved in ongoing litigation with the applicant.
13. For these reasons, I find this application unmeritorious and dismiss it with costs to the 6th respondent.

DATED AND DELIVERED AT NAIROBI THIS 17TH DAY DECEMBER, 2021 D. MUSINGA (P)

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

