



**Peterson G. Churi , Cornelious M. Gatere , Elizabeth Wangui Kariungi ,Isaac Gachango Muchiri, Gerald Gichogo Mutugi (As Trustees of Kaga Self Help Water Project & 2 others & 2 others v Ikinya (Civil Application 104 of 2020) [2021] KECA 300 (KLR) (17 December 2021) (Ruling)**

Neutral citation: [2021] KECA 300 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPLICATION 104 OF 2020  
DK MUSINGA, JA  
DECEMBER 17, 2021**

**BETWEEN**

**PETERSON G. CHUIRI , CORNELIOUS M. GATERE , ELIZABETH WANGUI KARIUNGI ,ISAAC GACHANGO MUCHIRI, GERALD GICHOGO MUTUGI (AS TRUSTEES OF KAGA SELF HELP WATER PROJECT & 2 OTHERS ..... 1<sup>ST</sup> APPLICANT  
LAND REGISTRAR, NYERI ..... 2<sup>ND</sup> APPLICANT  
COMMISSIONER OF LANDS ..... 3<sup>RD</sup> APPLICANT  
  
AND  
CHARLES MUCHEMI IKINYA ..... RESPONDENT**

*(An application for extension of time to file an appeal against the judgment of (J.K. Serگون, J) delivered on 16th July 2011) in HCC NO. 38 OF 2011)*

**RULING**

1. The applicants' Notice of Motion dated 28th September, 2020 brought under rule 4 of this Court's Rules seeks extension of time for filing the appeal in respect of the judgment of the High Court of Kenya at Nyeri in HCC No. 38 of 2011 that was delivered on 16th July 2012.
2. In a lengthy affidavit sworn by Cornelius M. Gatere, a trustee of the 1st applicant, he states, inter alia that upon delivery of the impugned judgment the 1st applicant instructed the firm of Gori, Ombongi & Company Advocates to file an appeal against the said decision and severally the said firm deliberately misled the 1st applicant into believing that an appeal had been filed, only for the 1st applicant to discover much later that no appeal had been filed.



3. Upon so realizing, the 1st applicant made a report to the Advocates Complaints Commission and the said Law Firm was cited for professional misconduct and directed to refund to the 1st applicant part of the fees that had been paid as a deposit for pursuing the appeal.
4. The 1st applicant instructed Messrs. Okelo Opolo & Company. Advocates on or about the 29th day of July, 2020 to prepare and lodge an appeal and the said advocates filed the application for extension of time on 28th September 2020. The 1st applicant urges this Court not to punish it for a mistake of its former advocate. It further contends that the intended appeal is not only arguable but has high chances of success. A draft memorandum of appeal was annexed to the applicants' affidavit.
5. The respondent opposed the application and stated in his replying affidavit that if at all the applicant filed a notice of appeal and requested for proceedings on 20th July, 2012 as alleged, he was not notified of the same contrary to the provisions of the law; that the judgment of the High Court which was in respect of the property known as Narumoru block 1/Ragati/603 has been fully executed in that the respondent has already subdivided the said property and disposed of all the subdivisions.
6. I have considered the application, the replying affidavits and the submissions filed by the parties. The judgment sought to be appealed against was delivered on 16th July, 2012. The principles that this Court considers in an application for extension of time under rule 4 of this Court's Rules are well settled. The Court considers the length of the delay; the reasons for delay; possibly the chances of success of the intended appeal and the degree of prejudice that may be occasioned to the respondent if the application is granted. See *Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi* [1999] 2EA 231.
7. The impugned judgment having been delivered on 16th July, 2012, and the application for extension of time having been filed on 28th September, 2020, the length of delay is about 8 years, which is quite inordinate delay. The notice of appeal was filed on 20th July, 2012 by Messrs. Kibuka Wachira & Company Advocates, who were then on record for the applicants. The applicants stated that they were not able to afford the charges of the said firm of advocates and they sought assistance from Kituo cha Sheria, who introduced them to Messrs. Gori, Ombongi & Company advocates who they instructed.
8. Although Messrs. Gori, Ombongi Advocates filed an application for stay of taxation of the bill of costs before the High Court on 31st October, 2013, they did not file an application for extension of time to file an appeal until 12th October, 2016. That application was filed in the High Court of Kenya at Nyeri. Between then and 27th April, 2018 when the applicants lodged a complaint with the Advocates Complaints Commission, it is not clear what became of the intended application for extension of time.
9. However, when it became clear to the applicants that Messrs. Gori, Ombongi Advocates had not fully acted on their instructions way back in April, 2018, the applicants ought to have moved with speed to instruct another firm of advocates to take up the matter. They did not do so until September, 2020. That delay of nearly two years has not been explained at all. This Court has severally held that each and every period of delay must be explained by a party before the Court can exercise its discretion in favor of the applicant. I therefore find that there has been inordinate delay that has not been well explained.
10. Turning to the issue of chances of success of the intended appeal, in the matter that was before the trial court, the learned judge ordered a reversal of an unprocedural cancellation of the respondent's parcel of land by the District Land Registrar. There is no indication that execution of the said judgment was ever stayed. The respondent has stated that even at the time the judgment was delivered, the suit property was no longer in existence because he had subdivided it into six plots, which he has since disposed of.
11. That averment has not been controverted by the applicants. It is therefore doubtful whether, even if this Court were to grant the order for extension of time, the intended appeal would serve any purpose when the respondent has no proprietary interest over the alleged suit properties.



12. For these reasons, I find this application lacking in merit and dismiss it with costs to the respondent.

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

**D. MUSINGA (P)**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**

