



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mungu’Ra v Njagi (Civil Application E41 of 2021)  
[2021] KECA 246 (KLR) (3 December 2021) (Ruling)**

Neutral citation: [2021] KECA 246 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT MALINDI  
CIVIL APPLICATION E41 OF 2021  
SG KAIRU, JA  
DECEMBER 3, 2021**

**BETWEEN**

**GLADYS MUTHONI MUNGU’RA ..... APPLICANT**

**AND**

**JULIUS NGARI NJAGI ..... RESPONDENT**

*(An application for extension of time to serve a notice of appeal against the judgment of the Environment and Land Court at Malindi (Olola, J.) delivered on 19th February 2021 in ELC Civil Appeal No. 7 of 2019 and the notice dated 22nd February 2021 be deemed to have been served on time)*

**RULING**

1. In her application dated 3<sup>rd</sup> May 2021, the applicant, Gladys Muthoni Mungu’ra, intent on appealing the judgment of the Environment and Land Court delivered on 19<sup>th</sup> February 2021, seeks an order, under Rule 4 of the Court of Appeal Rules, that the time to serve the Notice of Appeal be extended and that the notice of appeal is deemed to have been served on time.
2. In the affidavit supporting the application, the applicant has deposed, based on information from her advocate, that following the delivery of judgment on 19<sup>th</sup> February 2021, request was made to the court on the same day for the supply of typed proceedings and the judgment; that the notice of appeal was ready for filing on 22<sup>nd</sup> February 2021; that due to malfunctioning of the judiciary’s electronic filing platform, payment for the same could only be generated from 18<sup>th</sup> March 2021; that the notice of appeal was paid for on 19<sup>th</sup> March 2021 buy by then the time to file and serve the notice of appeal had lapsed.
3. Having considered the application, the grounds and affidavit in support against the legal principles applicable in matters of this nature (see for instance *Fakir Mohamed vs. Joseph Mugambi & 2 others [2005] eKLR* and the Supreme Court of Kenya decisionin in *Nicholas Kiptoo Arap Korir Salat vs.*



*IEBC & 7 others, Supreme Court Application No. 16 of 2014[2014] eKLR*), I am satisfied that this is a proper case for exercise of the Court's discretion in favour of the applicant. Satisfactory explanation has been given that the applicant was prevented from complying with the timelines set in the rules of the court for filing and service of the notice of appeal by reason of malfunction of the electronic filing system at the relevant time.

3. Accordingly, the application dated 3<sup>rd</sup> May 2021 is allowed in terms of prayer 1 thereof. The time for filing and service of the notice of appeal dated 22<sup>nd</sup> February 2021 is hereby extended. If the same has not already been served, the applicant shall serve the same within 14 days of delivery of this ruling.

I make no orders as to costs.

**DATED AND DELIVERED AT MOMBASA THIS 3<sup>RD</sup> DAY OF DECEMBER 2021.**

**S. GATEMBU KAIRU, FCI Arb**

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**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**

