



**Wameyo & 3 others v Wameyo (Civil Application 82 of 2019)  
[2021] KECA 267 (KLR) (3 December 2021) (Ruling)**

Neutral citation: [2021] KECA 267 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CIVIL APPLICATION 82 OF 2019  
PO KIAGE, JA  
DECEMBER 3, 2021**

**BETWEEN**

**ANTHONY WAMEYO ALIAS ELIENDERI WAMEYO STEFANO  
OBEMO ..... 1<sup>ST</sup> APPLICANT  
GEORGE OTIENO WAMEYO ..... 2<sup>ND</sup> APPLICANT  
HENRY OGOLA WAMEYO ..... 3<sup>RD</sup> APPLICANT  
JOSEPH OMOYA WAMEYO ..... 4<sup>TH</sup> APPLICANT  
  
AND  
  
JACOB OMOYA WAMEYO ..... RESPONDENT**

*(An application for extension of time to file a Notice of Appeal, Memorandum of Appeal and Record of Appeal from the Judgment and Decree of the Environment and Land Court at Busia (Kaniaru, J.) dated 21st May, 2019) in ELC Case No. 140 of 2013)*

**RULING**

1. The applicants have moved the Court by a Motion dated 17th July, 2019, seeking the following orders;
  - a. THAT period limited for filing and serving (sic) Notice of Appeal, Memorandum of Appeal and Record of Appeal be extended.
  - b. THAT the cost of this application be in the course.
2. Having considered the application, the grounds in support thereof and the law applicable in a Rule 4 application, I recall the holding of this Court in *Muringa Company Limited -v- Archdiocese of Nairobi*



Registered Trustees, Civil Application No. 190 of 2019 where the factors to consider, in the exercise of my discretion, which is free and unfettered, were stated as follows;

“Some of the considerations, which are by no means exhaustive, in an application for extension of time include the length of the delay involved, the reason or reasons for the delay, the possible prejudice, if any, that each party stands to suffer, the conduct of the parties, the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal, the need to protect a party’s opportunity to fully agitate its dispute, against the need to ensure timely resolution of disputes; the public interest issues implicated in the appeal or intended appeal; and whether, prima facie, the intended appeal has chances of success or is a mere frivolity.”

3. The application is founded on 12 grounds and supported by an affidavit sworn by George Otieno Wameyo, the 3rd applicant. He deposed that the judgment was entered against the applicants on 21st May, 2019. Being dissatisfied with the entire judgment, they promptly instructed their previous advocates, Messers Bogonko Otanga & Co Advocates to lodge an appeal. However, the said advocates did not take the necessary steps in lodging the appeal which occasioned the delay.
4. As soon as the applicants discovered the omission, they sought their current advocates on record to represent them in the matter. He urged the Court not to visit the sins of their previous advocates on them. Further, the subject matter is a parcel of land and it risks being disposed of if this application is not allowed in order to grant the applicants an opportunity to be heard on merit.
5. Even though there is no maximum or minimum period of delay set by the law, anyone seeking this relief must satisfactorily explain the cause of the delay. A plausible and satisfactory explanation is the key that unlocks the Court’s flow of discretionary favour. See Andrew Kiplagat Chemaringo -vs- Paul Kipkorir Kibet [2018] eKLR.
6. From the record, it is clear that the judgment was delivered on 21st May, 2019 and this application, though dated 17th July, 2019 was actually lodged at the registry on 22nd July, 2019. The delay was occasioned by two months, which I find plausible considering the events that took place in between. That is, the instructions given to the previous advocates, a reasonable time to wait before concluding that indeed the said firm was not interested in lodging the appeal, to seeking counsel from another law firm and for them to take up the matter and lodge this application. I find that the reason proffered and the length of delay taken to be plausible, reasonable and satisfactory.
7. In the upshot, I allow this application as prayed for and grant the applicants 14 days within which to file and serve the notice and record of appeal.
8. Costs shall be in the appeal.

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

**P. O. KIAGE**

.....

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**

