



**Kairu v Kingori & another (Civil Application 42 of 2021)
[2020] KECA 2 (KLR) (26 August 2020) (Ruling)**

Neutral citation: [2020] KECA 2 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT ELDORET
CIVIL APPLICATION 42 OF 2021
PO KIAGE, JA
AUGUST 26, 2020**

BETWEEN

JANE WANGUI KAIRU APPLICANT

AND

DAVID KAMUNYA KINGORI 1ST RESPONDENT

MARGARET WANJIRU KINGORI 2ND RESPONDENT

(An application seeking leave to appeal out of time from the Judgement of the Environment and Land Court at Kitale (M. Njoroge, J.) dated 26th August, 2020) in ELC NO. 23 OF 2014)

RULING

1. The applicant, Jane Wangui Kairu, by an undated Motion seeks the following orders;
 1. THAT the applicant be allowed to give a notice of appeal in writing out of time.
 2. THAT the applicant be allowed to lodge the notice of appeal with the Registrar of the superior court out of time.
 3. THAT the applicant be allowed to serve the notice of appeal out of time.
2. The application is supported by the affidavit of the applicant dated 8th October, 2020. There is no filed reply nor submissions for the respondents.
3. I have considered the application, the affidavit in support thereof and the submissions filed by the applicant. Even though the Court of Appeal Rules do not provide for the factors to be considered in a Rule 4 application, the Court has, over the years, devised principles to be applied to achieve a just



decision in the circumstances of each case. In the exercise of my discretion, which is free and unfettered, I find apposite what was stated in *Leo Sila Mutiso -vs- Rose Hellen Wangari Mwangi* (1999) 2 EA 231 ;

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this Court takes into account in deciding whether to grant an extension of time are: first the length of the delay, secondly, the reason for the delay; thirdly (possibly) the chances of the appeal succeeding if the application is granted; and, fourthly, the degree of prejudice to the respondent if the application is granted.”

4. The applicant avers that the delay in filing the notice of appeal was occasioned by the fact that she was never notified of the date of the judgment, and further that due to the outbreak of COVID-19 pandemic, she could not access the court registry and confirm whether judgment had been delivered.
5. Although there is no set cut off in days as to what constitutes inordinate delay the Court must be satisfied that any delay, no matter its length, has been reasonably explained. 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. I do not find the applicant’s explanation for the delay satisfactory, for the reason that first off, even though she avers that she was never notified of the judgment date, there is no evidence that she took any steps to establish the judgment date. Further, while it is true that in the wake of the COVID-19 pandemic the Chief Justice via a presser on 15th March, 2020 ordered the scaling down of court operations for two weeks, he also issued Practice Directions On Electronic Case Management on 4th April, 2020 which provided for e-filing and e-service system to be adopted by courts.
7. Additionally, Ouko, JA, the then President of the Court of Appeal, issued on 21st April, 2020 Practice Notes For The Conduct Of Court Business During The Global Coronavirus Pandemic, which were complimentary to the directions earlier issued by the Chief Justice. The directions highlighted the e-filing of documents, e-payment and e-service of documents using email and WhatsApp platforms.
8. I am not prepared to encourage the all-too-common practice of parties merely raising the Covid flag as the ready scapegoat for all their defaults. It should not lead to automatic forbearance. The Covid-19 pandemic in all its infernal permutations has become the New Normal. It has not suspended timelines and litigants must comply with them - as indeed a vast majority do.
9. In short, I decline to grant the prayer to extend time. Accordingly, the application is dismissed with costs.

DATED AND DELIVERED AT KISUMU THIS 11TH DAY OF FEBRUARY, 2022.

P. O. KIAGE

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JUDGE OF APPEAL

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

SIGNED

DEPUTY REGISTRAR

