



REPUBLIC OF KENYA



**Siengo v Ajwala (Environment and Land Miscellaneous Application
3 of 2023) [2024] KEELC 4384 (KLR) (30 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4384 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT SIAYA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 3 OF 2023**

AY KOROSS, J

MAY 30, 2024

BETWEEN

GEORGE OTIENO SIENGO APPLICANT

AND

JOSHUA OUMA AJWALA RESPONDENT

RULING

1. By a notice of motion dated 2/11/2023 that was filed by the applicant who acts in person, he sought the following reliefs: -
 - a. Spent.
 - b. Spent.
 - c. Leave and extension of time be granted for the applicant to appeal out of time against the decision of Siaya PM ELC Case no.78 of 2018 between himself and the respondent.
 - d. A grant of stay of execution of the decree issued in Siaya PM ELC Case no.78 of 2018 be issued.
 - e. Costs of the motion be provided for.
2. The motion was supported by several grounds on the face thereof and materially, the applicant stated he was aggrieved by the impugned decision and had an arguable appeal; he had previously applied for leave to appeal out of time which was struck out by this court on 7/09/2022; he had toiled in seeking the services of an advocate and that on 23/10/2023, the National Legal Aid Service came to his aid and around this time which was in September and October 2023, the respondent's son set ablaze his maize plantation which was existing in land parcel no. South Gem/Wagai/113 (suit property) and he (respondent's son) started plowing it and has even threatened his life.



3. In addition, the applicant George Otieno Siengo swore a supporting affidavit on 2/11/2023 whereby he reiterated the grounds in support of the motion. The motion was unopposed and as directed by the court, it was canvassed by written submissions.

Parties' submissions

4. The applicant filed brief submissions in which he merely stated he had been sued over the suit property in Siaya PM ELC Case no.78 of 2018 which was a suit between himself and the respondent.
5. The firm of M/s. Ko'winoh & Co. Advocates who act for the respondent filed written submissions dated 25/04/2024 and upon rehashing proceedings before the lower court, submitted the principles that should guide this court in allowing the motion were inter alia an applicant must show good and sufficient reasons, have an arguable appeal and was not guilty of delay.
6. On the principle of delay, counsel submitted there was no evidence National Legal Aid Service ever drafted pleadings for the applicant, and further, the applicant had failed to explain the circumstances of his delay between the period his application was struck out by the court on 2/02/2023 to the date of filing the instant motion. Therefore, the counsel argued the applicant was guilty of inordinate delay and had not adequately substantiated the reasons for the delay.
7. On the principle of arguability of the appeal and security, counsel submitted the applicant had not met the threshold and that the respondent would be prejudiced if the orders were granted and the applicant had failed to furnish security for the due performance of the decree. To buttress his argument, counsel relied on the case of *Njoroge v Kimani* (Civil Appl No. E049 of 2022 (2022) KECA 118 (eKLR)) but unfortunately, did not tender it to the court.

Issues for determination, Analysis, and Determination

8. Having carefully given thought to the motion, its grounds, affidavit, and rival submissions, the issues that arise for resolution and shall be addressed serially are: -
 - a. Whether an extension of time should be granted.
 - b. Whether the applicant has met the threshold to warrant a grant of stay of execution.
 - c. What orders should this court issue including an order as to costs?

a. Whether an extension of time should be granted.

9. As evident from the face of the motion, Section 79G of the *Civil Procedure Act* provides that appeals originating from the lower court should be filed before this court within 30 days from the date of the decree or order appealed against.
10. However, in occasions of delay, parties can by Section 95 of the *Civil Procedure Act*, move this court to exercise its judicious discretion based on good and sufficient grounds and the court may extend the time as it deems fit even if the time originally fixed has expired. Section 79G of the *Civil Procedure Act* states;

“Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order:



Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.”

While Section 95 of the [Civil Procedure Act](#) provides as follows: -

“Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Act, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.”

11. The principles that guide this court when faced with a prayer for an extension of time have been dealt with in a line of court decisions notably the recent decision of the Supreme Court of Kenya of [Non-Governmental Organizations Coordination Board v EG & 5 others \(Petition \(Application\) 16 of 2019\)](#) [2023] KESC 78 (KLR) (22 September 2023) (Ruling) which summarized the non-exhaustive principles thus: -

“The guiding principles in considering an application for extension of time were:

- a. extension of time was not a right of a party. It was an equitable remedy that was only available to a deserving party at the discretion of the court;
- b. a party who sought for extension of time had the burden of laying a basis to the satisfaction of the court;
- c. whether the court should exercise the discretion to extend time, was a consideration to be made on a case-to-case basis;
- d. whether there was a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
- e. whether there would be any prejudice suffered by the respondents if the extension was granted;
- f. whether the application had been brought without undue delay; and
- g. whether in certain cases, like election petitions, public interest should be a consideration for extending time.”

12. In rendering this decision, the Apex court cited with approval several authorities including the well-cited decision of [Leo Sila Mutiso V. Rose Hellen Wangari Mwangi](#) - Civil Application No. NAI 255 of 1997 (unreported) which stated that the principles that guide courts in the exercise of discretion were well settled in the following terms: -

“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.”

13. In considering the motion, this court has to bear in mind that though it has unfettered discretion, it must exercise its judicious discretion anchored on reason, material, and evidence placed before it. Since the circumstances of each case are unique as even a singular day could be tantamount to delay, each case has to be considered on its set of conditions.



14. In addition, this court must also consider its principal objective of facilitating the just, expeditious, proportionate, and accessible resolution of disputes as provided for in Section 3 of the *Environment and Land Court Act*.
15. On the principle of delay, this motion was filed on 7/11/2023 yet judgment was rendered on 5/11/2021 which was over 2 years before the motion was filed and this court considers this to be inordinate. Even so, this delay was interfered with when the applicant in an application dated 1/09/2022 sought to extend the time to appeal, however, this application was dismissed on a technicality on 2/02/2023.
16. Having been merely dismissed on a technicality, it was expected he would move with speed and file the instant motion without delay but that was not to be; he filed it 9 months after the ruling was rendered which this court finds was similarly inordinate.
17. On the reasons for the delay, I am not satisfied with the explanations advanced by the applicant. I have yet to comprehend the relations between the drawing of his pleadings and the National Legal Aid Service or his seeking the services of an advocate.
18. The instant motion and the previous application were all drawn by him and not by any other entity or an advocate and there is no evidence whatsoever that he ever visited the National Legal Aid Service or sought the services of an advocate.
19. In my considered view, his reasons were a smoke screen and an afterthought since it is evident that after this court struck out his application, he went on a slumber until around the time the respondent and or his agents sought to allegedly execute the judgment and that was when he rushed to this court.
20. The burden was upon the applicant to demonstrate by way of evidence, plausible and satisfactory reasons for the delay, and in the absence of a cogent explanation, I must conclude, find, and hold the applicant has not met the ingredients to warrant enlarging the time for him to file an appeal out of time.
21. This finding renders the determination of issue (b) unnecessary whilst on issue (c), the motion is hereby dismissed with costs. This court hereby issues the following disposal orders: -
 - a. The notice of motion dated 2/11/2023 is hereby dismissed.
 - b. Costs are awarded to the respondent.

Orders accordingly.

DELIVERED AND DATED AT SIAYA THIS 30TH DAY OF MAY 2024.

HON. A. Y. KOROSS

JUDGE

30/5/2024

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the Presence of:

In the Presence of:

Applicant acting in person present

Mr. Kowinoh for the respondent

Court assistant: Ishmael Orwa

