



**Mbaabu (Suing as the Legal Representative of the Estate of Amos Ndereba Mburugu – Deceased) v M’murithi (Environment and Land Appeal E007 of 2024) [2024] KEELC 4478 (KLR) (29 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4478 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT EMBU  
ENVIRONMENT AND LAND APPEAL E007 OF 2024**

**CK NZILI, J**

**MAY 29, 2024**

**BETWEEN**

**CAROLINE KIORO MBAABU (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF AMOS NDEREBA MBURUGU – DECEASED) ..... APPLICANT  
SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF AMOS NDEREBA MBURUGU – DECEASED**

**AND**

**JOSPHAT MURIUNGI M’MURITHI ..... RESPONDENT**

**RULING**

1. The court is asked to extend the time for an appeal to be filed out of time. The reasons are contained on the face of the application and in the supporting affidavit of Caroline Kioro Mbaabu, sworn on 16.2.2024. The applicant avers that the judgment was delivered on 26.6.2023 by the lower court and she had hoped that her former advocates had filed the appeal. It is averred that the said lawyers did not act as instructed and also failed to avail copies of the pleadings.
2. The applicant avers that after engaging the current lawyers, she was unable to trace an electronically filed copy, and similarly, upon perusing the lower court file on 13.12.2023, she realized the matter was due for assessment of costs on 15.12.2023.
3. The applicant avers her current lawyers were then allowed to come on record after a consent was signed on 13.12.2023, following which she objected to the bill of costs, and the file was reserved for a ruling on 9.2.2024; hence could not access it.
4. Similarly, the applicant avers that the proceedings and judgment were only availed on 22.1.2024. She blames the failure to file an appeal within time on inaction by the esterwhile lawyers, whose appeal has high chances of success and mistakes of former lawyers should not drive her out of the seat of justice.



5. Section 79G of the *Civil Procedure Act* grants this court discretion to admit an appeal out of time where sufficient cause or reasons have been given as to why the appeal was not filed within time. In exercising that power, the court has to consider the length of the delay, reasons for the delay, prejudice to the opposite party, the chances of the appeal succeeding, public interests, and the interest of justice. In *Nicholas Arap Salat v IEBC, seven others* (2014) eKLR, the court said extension of time is not a right of a party but discretionary on case to case basis, based on inter alia, the reasonable reasons for the delay, the interest of justice and the prejudice likely to be suffered by the opposite party. See *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* Nairobi Appeal No. 255 of 1997.
6. The onus is on the applicant to give a satisfactory explanation of why there was a delay. An applicant must show that he took all the necessary steps and diligently followed up on the matter. In *County Executive of Kisumu v County Government of Kisumu & others* Civil Application No. 3 of 2016, the Supreme Court of Kenya said that each case has to be determined on its merits and all the relevant circumstances considered.
7. In this application, the applicant solely lays the blame on her former lawyers who are said to have failed to adhere to her instructions to file the appeal on time. A case belongs to a party and not the lawyers. See *Savings and Loans Ltd v Susan Wanjiru Muritu* NRB HCC 397 of 2002.
8. It is not every infraction with the law that a party must blame a lawyer. A party has an equal obligation to be diligent and ensure that the instructions are executed on time. Section 1A, 1B, and 3A of the *Civil Procedure Act*, as read together with Article 159 of *the Constitution* lays the duty on the parties and their advocates to ensure there is expeditious disposal of suits. The responsibility is a shared one.
9. A party blaming the delay on his lawyers must show that he or she facilitated the advocates to execute the instructions. In this case, other than stating that the former advocate failed to execute her instructions the applicant had failed to state when the instructions were given, when the facilitation was made, and any follow-ups made to ensure that the thirty-day period to file the appeal was adhered to.
10. In *Mbugi & another v Matundio* (2024) KEELC 1393 (KLR) 7<sup>th</sup> March 2024 (Ruling), the court observed that a litigant must pursue the prosecution of his case and constantly check with the advocate the progress of the case. In this application, the delay is over eight months. The explanation given is wanting. The applicant does not own the mistake but shifts the same to her former lawyers; the delay in justice administration endlessly makes access to justice lengthy, expensive and inaccessible.
11. Courts can only address case delays and case backlogs if parties are vigilant and play their meaningful role to ensure the cogs of justice do not grind to a halt. In this application, follow-up letters for proceedings were not availed. The draft memorandum is lacking.
12. In the circumstances, I find no merits in the application. It is dismissed with costs.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 29<sup>TH</sup> DAY OF MAY, 2024**

**In presence of**

C.A Kananu

Mureithi for the applicant

Mwirigi B for the respondent

**HON. C K NZILI**

**JUDGE**

