



**Hussein Kasamani (Substituted by Abdul Kweyu Ogutu v Osore & another (Environment & Land Case 605 of 2014) [2024] KEELC 4173 (KLR) (23 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4173 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA  
ENVIRONMENT & LAND CASE 605 OF 2014**

**DO OHUNGO, J**

**MAY 23, 2024**

**BETWEEN**

**HUSSEIN KASAMANI (SUBSTITUTED BY ABDUL KWEYU  
OGUTU ..... PLAINTIFF**

**AND**

**OMARI OSORE ..... 1<sup>ST</sup> DEFENDANT**

**ALI SHIKUKU WERE ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. I delivered judgment in this matter on 28<sup>th</sup> June 2022. I held that the plaintiff had failed to establish adverse possession. Consequently, I therefore dismissed the plaintiff's case with an order that each party bears own costs.
2. Subsequently, the plaintiff filed Notice of Motion dated 30<sup>th</sup> August 2022, which is the subject of this ruling. The plaintiff seeks an order that time within which to file notice of appeal against the judgment be extended and that notice of appeal filed on 12<sup>th</sup> July 2022 be deemed to have been filed and served within time.
3. The delay in determination of the application is attributable to the fact that it was dismissed for nonattendance on 5<sup>th</sup> October 2022 and had to go through a process of reinstatement.
4. The application is supported by an affidavit sworn by the plaintiff. He deposed that he filed a notice of appeal and that the Deputy Registrar signed it on 18<sup>th</sup> July 2022. He added that the delay was not inordinate hence excusable.
5. The defendants filed grounds of opposition in which they took the position that this court lacks jurisdiction to entertain the application in view of Rules 4 and 75 of the *Court of Appeal Rules*



2010, that there had been inordinate and inexcusable delay in bringing the application. They further contended that the application was an abuse of court process.

6. The application was canvassed through written submissions. The plaintiff/applicant argued that this court has jurisdiction under Section 7 of the [Appellate Jurisdiction Act](#) and the notice of appeal was filed on 12<sup>th</sup> July 2022 but there was a delay on the part of the Deputy Registrar who signed it on 18<sup>th</sup> July 2022. He also argued that the delay was not inordinate and urged the court to exercise discretion and allow the application.
7. The defendants/respondents reiterated the position spelt out in their grounds of opposition. They relied on the case of [County Government of Mombasa v Kooba Kenya Limited](#) [2019] eKLR and urged the court to dismiss the application with costs.
8. I have considered the application, the affidavits, and the submissions. The issues that arise for determination are whether this court has jurisdiction to determine the application and whether the reliefs sought should issue.
9. Centrality of the issue of jurisdiction in any litigation cannot be overemphasised. As has often been stated by the courts, is everything. It is the very life and soul of any proceedings. Without it, the proceedings come to a certain end and the court cannot make any further step. See [Owners of the Motor Vessel "Lillian S" v Caltex Oil \(Kenya\) Ltd](#) [1989] eKLR and [Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others](#) [2012] eKLR.
10. The defendants have based their contention that this court lacks jurisdiction on Rules 4 and 75 of the [Court of Appeal Rules](#) 2010. I agree with the plaintiff that those two rules are irrelevant to the issue at hand. The simple answer is that Section 7 of the [Appellate Jurisdiction Act](#) expressly confers jurisdiction to determine an application such as the present one on this court. The section provides:

The High Court may extend the time for giving notice of intention to appeal from a judgment of the High Court or for making an application for leave to appeal or for a certificate that the case is fit for appeal, notwithstanding that the time for giving such notice or making such appeal may have already expired: ...

11. I need not belabour that under Article 162 (2) of the [Constitution](#), this court has the status of the High Court. I find that this court has jurisdiction to determine the application.
12. The next question is whether time within which to file notice of appeal against the judgment delivered herein on 28<sup>th</sup> June 2022 should be extended.
13. The guiding principles in an application for extension of time were identified by the Supreme Court in [Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others](#) [2014] eKLR as follows:

This being the first case in which this Court is called upon to consider the principles for extension of time, we derive the following as the under-lying principles that a Court should consider in exercise of such discretion:

1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;
2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court



3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
  4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
  5. Whether there will be any prejudice suffered by the respondents if the extension is granted;
  6. Whether the application has been brought without undue delay; ...
14. Judgment was delivered in this matter on 28<sup>th</sup> June 2022. In view of Rule 77 (2) of the [Court of Appeal Rules](#), notice of appeal was to be lodged within fourteen days of delivery of the judgment, that is, by the end of the day on 12<sup>th</sup> July 2022.
15. I have perused the record herein and I note that the plaintiff filed notice of appeal in respect of the judgment on 12<sup>th</sup> July 2022, well within time. The notice was however signed by the Deputy Registrar on 18<sup>th</sup> July 2022, which was outside the period provided under Rule 77 (2) of the [Court of Appeal Rules](#). No reason has been given for the delay on the part of the Deputy Registrar. Seeing that the delay was on the part of the court, I do not think that the plaintiff should be saddled with its consequences.
16. The jurisdiction conferred on the court under Section 7 of the [Appellate Jurisdiction Act](#) is specific: to extend the time for giving notice of intention to appeal from a judgment of the court. The plaintiff filed notice of appeal within time. As I understand it, giving notice of intention to appeal includes notifying the respondents in the intended appeal, by serving them with the filed notice of appeal.
17. To the extent that notice of appeal was filed within time, and that the delay in signing it was on the part of the court, I find merit in Notice of Motion dated 30<sup>th</sup> August 2022. The notice of appeal filed on 12<sup>th</sup> July 2022 is deemed to have been filed and served within time. I make no order as to costs.

**DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 23<sup>RD</sup> DAY OF MAY 2024.**

**D. O. OHUNGO**

**JUDGE**

Delivered in open court in the presence of:-

Mr Munyendo for the plaintiff

Mr Osango holding brief for Mr P K Kamau for the defendants

Court Assistant: M Nguyayi

