



Bohon v Koech & 3 others (Environment & Land Miscellaneous Case E001 of 2024) [2024] KEELC 3917 (KLR) (15 May 2024) (Ruling)

Neutral citation: [2024] KEELC 3917 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND MISCELLANEOUS CASE E001 OF 2024**

A OMBWAYO, J

MAY 15, 2024

BETWEEN

KIPKOECH R BOHON PLAINTIFF

AND

LEONARD KIPRONO KOECH 1ST DEFENDANT

WILLIAM KIRUI 2ND DEFENDANT

JOEL CHERIRO 3RD DEFENDANT

PAUL RONO 4TH DEFENDANT

RULING

1. Kipkoech R Bohon has come to this court seeking orders that this honorable court be pleased to grant the applicant leave to lodge an appeal out: of time and that this honorable court be pleased to extend the time for filing an appeal in Molo Chief Magistrate's Elc 46 Of 2022. Upon grant of prayers 2 and 3 above, provide timelines for filing the appeal. The costs of this application be in the cause. The application is based on grounds that the applicant herein instituted Molo Chief Magistrate Elc Cause No 46 of 2022. That judgment in the matter was delivered on the 7th day of September 2023 by the Honorable B.R Kipyegon (PM). That at the time of delivery of the judgment, counsel for the applicant was absent.

That the applicant did not get the outcome of the judgment in time.

2. That the plaintiff/applicant being dissatisfied with the judgment wishes to appeal against the said judgment in its entirety. That the plaintiff/applicant has a genuine interest in pursuing the appeal and to that effect/ a letter has been written to the court requesting for a copy of the typed and certified proceedings as well as filed this instant application before this honorable court. That it is because of the circumstances outlined that this application is seeking this honorable court's leave for the plaintiff/applicant to file an appeal out of time as well as stay execution of judgment.



3. That the intended appeal raises substantial issues that need to be heard and determined on their own merits in the appeal. That the respondents will not suffer any prejudice should this application be allowed. The main reason for failure to file the appeal is there was breakdown in communication between the applicant and his advocate.
4. The respondent opposes the applicant on grounds that the Application herein is an afterthought; incompetent, lacks merit and only intended to frustrate the wheels of justice and enjoyment of the judgment. Both the plaintiffs and the 1st defendant Advocates were at all material times on record for the parties and participated fully in the court proceedings from the commencement stage to the delivery of judgment, and were therefore well aware of the conduct of the proceedings including the date of delivery.
5. The Judgment was delivered on 7th day of September 2023 dismissing the Plaintiffs case with costs to the Defendant's. That the respondents firm on record equally effected service of Party and Party Bill of costs dated 21st September 2023 upon Plaintiff's Advocates on record on the 22nd September 2023 who never opposed the same and the same was taxed on 13th October 2023.
6. The Warrants of attachments were procured after the Copy of the decree and Certificate of costs was served upon the Plaintiff and he failed to comply.
7. The Plaintiff was at all material times aware of the terms of the Judgment and has been awakened by the Proclamation and Warrants of attachment his efforts are just aimed at frustrating the defendant's enjoyment of the fruits of the judgment
8. The Applicant ought to have exercised due diligence in following up the matter with his Advocate to know the outcome and come up with a possible cause of action,
9. The Applicant has not shown any plausible reasons for the delay in filing the intended appeal. The delay is therefore irrational, unconvincing, unreasonable and inordinate. The Applicant has not demonstrated any efforts made in pursuit of having the Appeal lodged on time. The intended Appeal does not raise any substantial issues for consideration.
10. I have considered the application and do find that judgment was entered on 7th September, 2023. The application is being made on 28th February 2024 more than 5 months after judgment. The Bill of costs was filed and served upon the firm of Ndenda Associates on 22nd September 2023. There is no evidence of in-advertent breakdown of communication as the applicant has not attempted to demonstrate that there was an effort by the applicant to reach the advocate terms of missed calls or letters sent on wrong post box number..
11. I do find that the applicant has not satisfactorily explained the delay. He does not tell us exactly when he became aware of the judgment. He merely states that he became aware of the judgment at the time when the period of appeal had lapsed. That is not enough. I do find that the application lacks basis and is dismissed with costs.
12. Ruling dated, signed and delivered virtually at Nakuru this 15th day of May 2024.

A. O. OMBWAYO

JUDGE



