



Mutuma v National Bank Of Kenya & 3 others (Environment & Land Miscellaneous Case E001 of 2024) [2024] KEELC 5023 (KLR) (26 June 2024) (Ruling)

Neutral citation: [2024] KEELC 5023 (KLR)

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

**CK NZILI, J
JUNE 26, 2024**

BETWEEN

PHINEUS MUTUMA PLAINTIFF

AND

NATIONAL BANK OF KENYA 1ST DEFENDANT

DUNCAN WATTA 2ND DEFENDANT

JENARO MARKO GIKUNDA 3RD DEFENDANT

HELLEN KANANA MUTEA 4TH DEFENDANT

RULING

1. Extension of time to file an appeal is a discretionary power bestowed upon a court under section 79 G of the *Civil Procedure Act*. A party applying must show sufficient reason why the appeal ought to be admitted out of time. In the application dated 30.1.2024, the applicant has deponed an affidavit sworn by Phineus Mutuma on the even date saying that he was not aware of the delivery date of the judgment until 30.1.2024, yet it was read on 27.10.2023 in absence of the parties.
2. It is averred that the initial judgment date of 28.9.2024 was changed as the magistrate had been transferred to Meru. He blames the court for the delay and fears losing his land. The draft memorandum of appeal is attached to the applicant.
3. The application is opposed through a replying affidavit of Chrispin Mathiya for a delay of three months, said to be inordinate for lack of a follow-up and an explanation for the delay. The memorandum of appeal is also said to be raising no tangible grounds for appeal. In *Nicholas Arap Salat v IEBC and 6 others* (2013) eKLR, the court observed that an extension of time is not a right of a party but a discretion by the court to be exercised on a case-to-case basis, where the delay is explained to the satisfaction of the court and in the interest of justice. Other than saying that a magistrate was



transferred and laying the blame on the court, the applicant does not state what he did on his part to make a follow-up with the court registry.

4. It is not enough to blame other parties without explaining how vigilant one has been, for a court only helps the vigilant and not the indolent. A single letter showing follow-up would have sufficed to show that between 27.10.2023 and 1.2.2024, the applicant was not in slumber. The explanation given is not satisfactory. I reject the application. The same is dismissed with costs.

5. File closed.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 26TH DAY OF JUNE, 2024

HON. C K NZILI

JUDGE

In presence of

C.A Kananu/Mukami

Miss Gitari for 1st respondent

