



**Baithumbi v Njau (Environment and Land Miscellaneous Application  
E018 of 2024) [2024] KEELC 4831 (KLR) (12 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4831 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E018 OF 2024**

**CK NZILI, J  
JUNE 12, 2024**

**BETWEEN**

**JACKSON MUGAA BAITHUMBI ..... APPLICANT**

**AND**

**CHARLES MUTURA NJAU ..... RESPONDENT**

**RULING**

1. The court is asked to grant leave for the applicant to file an appeal against the judgment delivered on 15.11.2023 in Maua Cm ELC No. 228 of 2017 out of time of time. The reasons are contained on the face of the applications and a supporting affidavit of Jackson Mugaa Baithumbi, sworn on 24.4.2024. It is averred that the applicant was taken ill for a long time and hence could not instruct counsel to file his appeal as per the attached medical report marked MB “3”. Further, the applicant says that after the request for the typed proceedings and judgment, it took time to be supplied with the same. He has annexed a copy of the judgment and a draft memorandum of appeal as annexures JMB “1” & “2”, respectively. The applicant, therefore, also blames the court for his failure to prepare the record of appeal on time.
2. Though the respondent was served with the application and attended court on 29.5.2024, no response was filed.
3. Section 79G of the *Civil Procedure Act* provides that the court may, for good and sufficient reason, grant leave to an applicant who failed to lodge his appeal on time. In *Edith Gitbungu Koime v Stephen Njagi Thoiti* [2014] eKLR, the court observed that some of the factors to consider as the period of the delay, reasons for the delay, the degree of prejudice to the opposite party if the application is granted and whether the matter raises issues of public importance.
4. On delay, the court in *Kamlesh M.D Pattni v DPP* [2015] eKLR said that judicial officers exist to dispense justice; they derive their mandate from the people and that a state officer must be guided



by the national values and principles of governance, including being redolent of fairness and the best interest of the people whom the law is intended to serve. The court concurred with the trial court that a court of law should be slow in closing the door to the corridors of justice, prior to a litigant being heard on his complaint.

5. Applying the preceding reasoning, the applicant has given the reasons as sickness and delay by the court to furnish him with the proceedings and judgment. No letter requesting the proceedings or confirming when the same was supplied to the applicant has been attached. There is nothing also to show whether the applicant was hospitalized and or admitted to any hospital facility. The applicant was taken ill and sought medical attention on 29.11.2023, while the judgment was delivered on 15.11.2023. It is not clear when the applicant made a recovery and was able to follow up on the proceedings. Without such evidence or facts, the court is unable to find good and sufficient.
6. In *Mombasa County government v Kenya Ferry Services Ltd* [2019] eKLR, the Supreme Court of Kenya, echoing the *Nicholas Kiptoo Arap Salat v IEBC* case, said that the applicant must give extenuating circumstances that can enable the court to exercise its discretion in his favor since the extension of time is not a right.
7. Notwithstanding the above, the court has looked at the draft memorandum of appeal. It raises arguable points of appeal. The respondent has not expressed any prejudice if the application is allowed that cannot be ameliorated by way of costs.
8. In the circumstances, I shall allow the applicant to file the appeal out of time. The same shall be filed within 14 days from the date hereof. There will be no order as to costs.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU**

**ON THIS 12TH DAY OF JUNE, 2024**

**HON. C K NZILI**

**JUDGE**

