



**Mugambi & 4 others v Thuginku (Suing as the Legal Representative of the Estate of Thiginki Jacob Mugitra alias Thiginki - Deceased) (Environment and Land Miscellaneous Application E017 of 2024) [2024] KEELC 4565 (KLR) (5 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4565 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MERU**  
**ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E017 OF 2024**  
**CK NZILI, J**  
**JUNE 5, 2024**

**BETWEEN**

**MOSES MUGAMBI ..... 1<sup>ST</sup> APPLICANT**  
**GEOFFREY MURIUKI MANENE ..... 2<sup>ND</sup> APPLICANT**  
**JANE KIRIGO MURIUKI ..... 3<sup>RD</sup> APPLICANT**  
**THE LAND REGISTRAR IMENTI NORTH DISTRICT ..... 4<sup>TH</sup> APPLICANT**  
**THE ATTORNEY GENERAL ..... 5<sup>TH</sup> APPLICANT**

**AND**

**SEBERINA ALFRED THUGINKU (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF THIGINKI JACOB MUGITRA ALIAS THIGINKI - DECEASED) ..... RESPONDENT**

**RULING**

1. The court is asked to extend the time for the applicants to file an appeal out of time. The reasons are contained on the face of the application dated 7.5.2024 and supporting affidavits of Geoffrey Muriuki Manene and Kiyuki Betty, advocate, sworn on the even date. The applicant's counsel avers that the ruling sought to be appealed against was delivered on 4.4.2024, but due to a power outage for three consecutive days, online filing of the memorandum of appeal was not possible by the deadline on 4.5.2024. The applicants' term the delay not inordinate, and given that the appeal has merits, it is in the interest of justice to grant the orders sought.
2. Section 79G of the *Civil Procedure Act* grants the court powers to extend the time to file an appeal out of time where there are good reasons why the applicant was unable to file the appeal within time. In *Nicholas Arap salat & others v IEBC & others* (2014) eKLR, the court observed that to extend time was



not a right for a party but a discretionary power to be exercised on case to case basis. The parameters include the length of the delay, reasons for the delay, public interest, prejudice to the opposite party, and the interest of justice.

3. The delay in filing the appeal in this application was five days. The reason(s) given is that there was a power outage, presumably in the applicant's advocate offices. The affidavits are sworn by both the 2<sup>nd</sup> applicant and Miss Kiyuki advocate, who confirms that she was instructed to file the appeal, but towards the deadline date; there was a power outage for three consecutive days; hence, online filing was impossible. There is no indication if the applicants opted for an alternative method to upload the appeal including visiting the court premises to seek assistance.
4. The applicants aver that their proposed appeal has merits and that in the interest of justice, the court should grant the orders sought. The court has looked at the draft memorandum of appeal. The ruling sought to be appealed against was out of inertia on the part of their advocates on record and the applicants not attending court. The application to set aside the exparte judgment and to re-open the defense was also filed after an inordinate delay of three months.
5. In this application, the applicants do not mention when they instructed counsel to file the appeal. It could be that they also lodged the instructions late. Nothing was stopping the applicants from using alternative means to file the appeal. It is not clear why the applicants waited until the last three days only for there to be a blackout. No evidence has been tendered to show that there was a blackout and the area that was experiencing the blackout. There are other sources of power apart from KPLC that the applicants could have used.
6. Similarly, the applicants could have resorted to a cyber café or Huduma center for assistance, if the courthouse was very far away. There is also no evidence that the applicants sought leave to appeal against the ruling from the trial court. The applicants are nevertheless granted leave to file the memorandum of appeal within 3 days from the date hereof. Costs to the respondent.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 5<sup>TH</sup> DAY OF JUNE, 2024**

In presence of

C.A Kananu

Miss Kitheka for Omari for respondent

Miss Kimotho for Kiyuki for 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> appellant

**HON. C K NZILI**

**JUDGE**

