



**Joel v Baariu & 3 others (Miscellaneous Application
E019 of 2024) [2024] KEELC 5740 (KLR) (31 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5740 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
MISCELLANEOUS APPLICATION E019 OF 2024**

**CK NZILI, J
JULY 31, 2024**

BETWEEN

EUNICE JOEL AIAS EUNICE NCECE NDUBAI APPELLANT

AND

MISCHECK BAARIU 1ST RESPONDENT

JAPHET MUTWIRI 2ND RESPONDENT

JAMES MUTHOMI 3RD RESPONDENT

THE HON ATTORNEY GENERAL 4TH RESPONDENT

RULING

1. The court is asked to grant leave to the applicant to lodge an appeal out of time against a judgment delivered on 5.3.2024 by Tigania PMC ELC No. 101 of 2015 and also stay the execution of the decree. The reasons given are contained in the supporting affidavit of Eunice Joel alias Eunice Ncece Ndubai. The applicant blames the court registry for not supplying typed copies of proceedings and judgment on time, as well as the economic hardship she has been experiencing in order to instruct lawyers to represent her. The applicant avers that she is old, illiterate and stands to be displaced from the suit land that will disrupt her life and her primary source of livelihood, yet she has an arguable appeal.
2. The applicant avers that she is willing to fast-track her appeal to avoid prejudicing the respondents and that it was in the interest of justice to grant the orders sought; otherwise, she would suffer grave loss and damage. Additionally, the applicant avers that she is not able to offer any security other than any other condition that the court may impose.
3. In the supporting affidavit, the applicant avers that she obtained the copies of judgment on 10.4.2024 after learning of its delivery in early March 2024 and was not able to contact her former lawyers on



- record for she had no telephone number, that she had to seek transport and subsistence to go to his offices physically and that her draft memorandum of appeal contains arguable points.
4. A party seeking to appeal against a lower court judgment has to file the appeal within 30 days from the delivery of the judgment or ruling. Section 79G of the *Civil Procedure Act* grants this court powers to admit an appeal to be filed out of time if there are sufficient reasons why it was not filed within time. The discretion to extend time is not a right of a party. The court has to consider the length of the delay, prejudice to the opposite party and the interests of justice. See *Nicholas Arap Salat v Independent Electoral and Boundaries Commission & others* (2014) eKLR.
 5. In *Murere v Nyongesa Civil appeal* (application) E150 of 2023 (2024) KECA 130 (KLR) (9th February 2024) (Ruling), the court cited *Leo Sila Mutiso v Hellen Wangari Mwangi* (1999) 2 EA 231 that another ground to consider is the chances of the appeal succeeding on stay. A party must apply within a reasonable time, demonstrate substantial loss, offer security for the due realization of the decree should the appeal not succeed, and lastly, show that it is in the interest of justice to grant the orders sought. See *Housing Finance Company of Kenya v Sharok Kber Mohamed & another* (2015) eKLR.
 6. Substantial loss is what ought to be prevented from happening, which is likely to negate the very essential core of the appeal, hence rendering it nugatory. See *James Wangalwa v Agnes Cheseto* (2012) eKLR. On security, it is not a matter of willingness but serves the purpose of acting as security since, in the Civil process a judgment is like a debt. See *Arun C. Sharma v Ashana Raikundalia & 5 others* (2015) eKLR.
 7. In this application, the judgment sought to be appealed was rendered on 5.3.2024. It dismissed the suit with no order as to costs. This application was filed on 5.6.2024 after a delay of three months. The reasons given for the delay are lack of communication with the former lawyers, economic hardship, illiteracy, and old age. In *Amina Karama v Njagi Gachagua & others* (2020) eKLR, the court observed that equity aids the vigilant but not the indolent and that delay defeats equity. Conscience, good faith and reasonable diligence are expected of litigants.
 8. In *Nicholas Kipkorir Arap Salat v IEBC* (2014) eKLR, the court observed that extension of time is a creature of equity, one can only enjoy it if he acts equitably and he who seeks equity must do equity.
 9. The applicant has laid the basis for why she has come late to seek an extension of time. She depones that she was not at fault for letting time to lapse. The discretion to extend time is not exercised whimsically on sympathy or caprice but judicially. See *Paul Wanjohi Mathenge v Duncan Gichane Mathenge* (2013) eKLR.
 10. The lower court dismissed the applicant's suit. She has attached a draft memorandum of appeal, which appears to disclose arguable points of appeal. I think the applicant has explained to the satisfaction of this court the reasons for the delay. Economic distress has been advanced as one of the reasons why the applicant did not file an appeal on time. The respondent has not denied that fact.
 11. As to the stay of execution, what the trial court gave is a negative order that is incapable of being stayed. See *Catherine Njeri Maranga v Serah Chege & another* (2017) eKLR, *Kaushik Panchamatia & 3 others v Prime Bank Ltd & another* (2020) eKLR and *West College of Arts & Applied Sciences v E.P Oranga & others* (1976) KLR 63.
 12. The upshot is that I extend the time to file the intended appeal. The memorandum of appeal shall be filed and served within 14 days from the date hereof. Costs shall abide by the intended appeal.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 31st DAY OF JULY, 2024



In presence of

C.A Kananu/Mukami

Kerubo for Nyamu for the applicant

Mugo for Gichunge Muthuri for 2nd & 3rd respondent

HON. C K NZILI

JUDGE

