



**Keter v Jeptum (Environment and Land Miscellaneous Application  
E011 of 2024) [2024] KEELC 7202 (KLR) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7202 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E011 OF 2024  
MN MWANYALE, J  
OCTOBER 31, 2024**

**BETWEEN**

**JACKSON KETER ..... PLAINTIFF**

**AND**

**EUNICE JEPTUM ..... DEFENDANT**

**RULING**

1. This Ruling is in respect of the unopposed application dated 3<sup>rd</sup> September 2024, seeking leave of Court to file an appeal out of time. At the Exparte stage, the Court gave timelines in respect of filing of responses and fixed the hearing of the application on 24/10/2024.
2. On the appointed day, Mr. Mutai Learned Counsel for the Applicant was the only one who attended virtual Court in the matter, he confirmed service of the application but that no response had been filed on the same.
3. Upon the Court being satisfied as to service, the Court allowed Mr. Mutai to argue the application.
4. Although the application was unopposed, nonetheless the Court needed to hear the merits and otherwise of the application so as to make its findings on the same. This is in line with the decision of the Court of Appeal in the case of Karugi and 2 others vs Kabiya and 3 others (1983) eKLR where the Court held as follows; -  

“The burden on a Plaintiff to prove his case remains the same throughout the case even though the burden may become easier to discharge when the matter is not validly defended. The burden of proof is not way lessened because this this is heard by way of formal proof...”
5. By parity of reasoning, the same apply to an unopposed application like the one now under consideration.



6. In his application, Jackson Keter the Applicant seeks the following orders;
  - a. Spent
  - b. The Honourable Court be pleased to grant leave to the Applicant to file an appeal out of time against the judgment delivered on 19/9/2023 Kapsabet CM's ELC case No. 106/2018.
  - c. The Honourable Court be pleased to extend the time within which the Applicant may file the memorandum of Appeal
  - d. Costs of application be in the cause
7. The application brought under Section 79(g) of the *Civil Procedure Act* and Order 51 of the Civil Procedure Rules is grounded on grounds interalia; -
  - i. The judgment was delivered in ELC Case No. 106/2018 on 19/9/2023 and the statutory period for lodging an appeal has lapsed.
  - ii. That the delay was neither inordinate nor deliberate and was occasioned by reasons beyond the Applicant's control, that the Applicant has a meritorious Appeal as demonstrated in the draft Memorandum of Appeal, that the Respondent will not suffer any prejudice if the orders sought herein are granted, whilst the Applicant stands to suffer irreparably and interests of justice would be best served if orders are granted.
8. The application is supported by the affidavit of the Applicant who reiterates the grounds in support of the application and further detail the reasons for failure to file an appeal immediately attributing the said delay having being non-communication of the judgment in the lower Court by previous counsel and not able to file raise funds immediately he became aware of the judgment so as to lodge an appeal.
9. The Applicant annexed a copy of the draft Memorandum of Appeal and judgment in support of his case.
10. In his brief submissions the Applicant through Mr. Mutai submitted that there was no willful or deliberate delay as the Applicant was not promptly informed of the delivery of judgment and he had a strong case with probabilities of success.

**Issues for Determination: -**

11. Having analyzed the application, the affidavits and annexures, and submission I frame the following as issues for determination.
  - i. Whether or not the Applicant has met the criteria for grant of leave to file an appeal out of time
  - ii. Whether the application is merited

**Analysis and Determination: -**

12. Section 79(g) of the *Civil procedure Act* provides for time to file an appeal as 30 days; and in the proviso provides for an admission of appeal out of time if the Appellant satisfies Court that he had good & sufficient case for not filing an appeal on of time. It follows therefrom that an Applicant who seeks to have discretion exercised in their favour has to demonstrate good and sufficient cause for not appealing in time.



13. The Courts have equally developed principles upon which the Court should consider in grant of leave to file an appeal out time, in *Leosila Mutiso vs Rose Hellen Wangari Mwangi* (Civil Application No. 251/1997), the Court held interalia; -

“it is now settled that the decision whether or not to extend the time for appealing is essentially discretionary, it is also well settled that in general the matters which this Court takes into account in deciding whether to grant an extension are first the length of the delay, secondly the reason for the delay, thirdly the chances of the appeal succeeding if application is granted, fourthly the degree of prejudice to the Respondent if the application is granted.”

14. The Court shall now examine the application in light of each of the said principles.

15. With regard to the length of time. The judgment herein was delivered on 19/9/2023, in absence of both parties. The application was filed on 3/9/2024, while the appeal ought to have been filed on or before 19/10/2023, there was thus a delay of about 11 months; was this delay inordinate, 11 months is a long time, but given that the Applicant became aware of the judgment in June of 2024, the delay is not very inordinate.

16. On principle 2, the reasons advanced were that there was no communication from the previous advocates on the delivery of judgment. The Judgment is indicated to have been delivered in the absence of parties and it is plausible to believe that the Applicant did not receive immediate communication on the judgment till June 2024 as he deposes, the reasons for lack of funds to file an appeal are a bit far-fetched as the Applicant was represented by Counsel in Subordinate Court in any event, the Court does not find the reason advanced to be good and sufficient reason as envisaged under Section 79 (9) of the *Civil Procedure Act*.

17. Having found the reasons not to be sufficient the Court shall not consider the other limbs in the principles in *Leo Silla Mutiso*.

18. The Court thus finds that the Applicant has not demonstrated good and sufficient reason to allow exercise of discretion.

19. Overall, on whether the application is meritorious the Applicant did not cite any decision to support his case but only relied on the reasons. Having found the reasons not to be satisfactory it follows thus the application is not meritorious and the same fails.

20. The end result is that the application is dismissed, with no orders as to costs.

**RULING DATED AND DELIVERED AT KAPSABET THIS 31<sup>ST</sup> DAY OF OCTOBER, 2024.**

**HON. M. N. MWANYALE,**

**JUDGE**

**In the presence of; -**

1. Mr. Mutai for the Applicant

