



Republic v District Adjudication & Settlement Officer, Meru Central & 3 others; Kangethe & another (Exparte Applicants) (Judicial Review E005 of 2022) [2024] KEELC 6860 (KLR) (17 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6860 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
JUDICIAL REVIEW E005 OF 2022
CK YANO, J
OCTOBER 17, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

**THE DISTRICT ADJUDICATION & SETTLEMENT OFFICER, MERU
CENTRAL 1ST RESPONDENT**

THE LAND REGISTRAR 2ND RESPONDENT

THE HON. ATTORNEY GENERAL 3RD RESPONDENT

FRANKLINE GITONGA NGAI 4TH RESPONDENT

AND

LOISE NJIRU KANGETHE EXPARTE APPLICANT

NICHOLAS KIMATHI KANGETHE EXPARTE APPLICANT

RULING

1. Before me for determination is the notice of motion dated May 28, 2024 by the applicants/intended appellants seeking for orders that the time for filing a record of appeal be enlarged beyond the 60 days provided. The application is said to be brought under Order 50 Rule 6 of the *Civil Procedure Rules* and Sections 1A & 3A of the *Civil Procedure Act* and all enabling provisions of the law.
2. The application is supported by the affidavit of Loise Njiru Kangethe the 1st applicant herein and is based on the grounds that judgment was delivered in Meru Judicial Review No. E005 of 2022 on December 14, 2023 dismissing the applicant’s application with costs to the respondent. That subsequent to that, a copy of judgment was issued on February 27, 2024. That the decree which is



vital document in the record of appeal is yet to be signed and released to the applicants' counsel. That the applicants were facing financial constraints that made it impossible to file an appeal within time. That the filing of a record of appeal has delayed by one month which does not constitute undue delay and that the applicants have an arguable appeal, adding that the respondents are unlikely to suffer any prejudice as a result of enlargement of time.

3. The application is opposed by the 4th respondent through a replying affidavit dated June 20, 2024. It is the 4th respondent's contention that there is no justifiable reason that has been given for the delay in extraction of the decree since December 14, 2023 when the judgment was delivered considering that the court delivered a typed judgment. That there is no letter requesting for certified copy of the decree that has been availed. That the applicants were indolent in pursuing the appeal and went to sleep and only woke up from slumber when the 4th respondent set his bill of costs for taxation. The 4th respondent stated that the applicants are people of means with financial muscle to settle the legal fees and that the explanation given is an outright lie. That the application has been made after excessive delay of six months after the judgment was delivered. The 4th respondent argued that litigation must come to an end, adding that he would suffer prejudice if he is dragged further in the court corridors considering that he is a pauper with no resources to settle any further costs to be incurred in the matter.
4. I have considered the application and the affidavits in support and against. My understanding is that the applicants are asking this court to enlarge time for filing of appeal. The applicants aver that they were dissatisfied with the decision of this court and wish to prefer an appeal (presumably in the court of appeal). I say presumably because the applicants have not stated their intention clearly. However, since a judgment was delivered by this court on December 14, 2023, an appeal on the same can only lie in the court of appeal. I will therefore proceed and determine the application on that understanding.
5. There is no denial that this court delivered a judgment in this matter on December 14, 2023. In that judgment, the court dismissed the *ex-parte* applicants notice of motion dated June 30, 2023 with costs to the respondents and the interested party. The applicants, being dissatisfied with the said judgment, have indicated that they want to prefer an appeal. It appears that the applicants did not lodge their intended appeal within the time stipulated in law. Consequently, they are now asking this court to extend that time.
6. Section 7 of the *Appellate Jurisdiction Act* gives the court power to *inter alia* to extend time for giving notice of intention to appeal from a judgment of this court or for making an application for leave to appeal notwithstanding the time for giving such notice or making such appeal may have already expired. The question that arises is whether the applicants have given a satisfactory explanation for their failure to file the appeal on time.
7. In this application, the applicants aver that they were facing financial constraints that made it impossible for them to file the appeal within time. The judgment sought to be appealed against was delivered on December 14, 2023. The applicants stated that they obtained a copy of the judgment on February 27, 2024. This application is dated May 28, 2024. Therefore, the delay is about 3 months. As already pointed out, the applicants have stated that they were facing financial constraints. I have no reason to doubt the applicants' averment. Although the respondent has stated that the applicants are people of means, it is now the word of the applicants against that of the respondent. In my considered view, no prejudice will be suffered by any of the parties if the application is allowed to enable the applicants exercise their constitutional right to lodge an appeal. It is my view that the delay was not so inordinate and the applicants have given a good reason for their failure to lodge an appeal within time. I find that the application meets the tests for the court to exercise its discretion in the applicants' favour.



8. Consequently, and for the interest of justice, I allow the notice of motion dated May 28, 2024. The applicants are ordered to file and serve the notice of appeal within 7 days from the date of this ruling. Since the delay was occasioned by the applicants, I condemn them to bear the costs of the application.

9. It is so ordered.

DATED SIGNED AND DELIVERED AT MERU THIS 17TH DAY OF OCTOBER, 2024

C.K YANO

ELC JUDGE

In presence of

Court Assistant – Tupet

Mwirigi Batista for Interested Party/4th Respondent

