



**Etaya v Murungi (Environment and Land Miscellaneous Application  
E036 of 2024) [2024] KEELC 13202 (KLR) (13 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 13202 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E036 OF 2024  
CK NZILI, J  
NOVEMBER 13, 2024**

**BETWEEN**

**ARITHI ETAYA ..... APPELLANT**

**AND**

**JULIUS MURUNGI ..... RESPONDENT**

**RULING**

1. The court is asked to enlarge the time within which the applicant can appeal against a lower court ruling delivered on 19.6.2024. The reasons are contained on the face of the application dated 5.8.2024 and in a supporting affidavit of Arithi Etaya sworn on 5.8.2024. Briefly, the applicant says that the court's judgment dated 15.2.2023 as attached an annexure AE – 1 was confusing and that after further evidence was availed, it did not point out a conclusion in the matter and thus parties took time to present further evidence.
2. The applicant avers that even after the ruling was delivered on 19.6.2024, attached as annexure AE – 2, it was not clear who had lost or won the suit.
3. The applicant, therefore, avers that he has an arguable appeal; the orders will not prejudice anyone; otherwise, if not granted, he shall lose his title deed.
4. Extension of time to appeal under Section 79G of the *Civil Procedure Act* is allowed if there is sufficient reason for not filing the appeal within the stipulated time. The parameters to consider are the length of the delay, reasons for the delay, chances of the appeal succeeding, degree of prejudice to the opposite party, the importance of complying with time limits, effect on the administration of justice, and public interest in the matter.
5. In *Nicholas Arap Salat vs IEBC & others* (2014) eKLR, the court said that extension of time was not a matter of right but is a discretionary power of the court to be exercised in the interest of justice in a judicious manner, where an applicant has laid basis or explained to the satisfaction of the court, the



reason for the delay. An application for an extension of time must be brought without unreasonable delay. One of the reasons is whether the appeal has merits or not.

6. An arguable appeal need not succeed but is one that the court should hear.
7. In excusable delays are delays that are unforeseeable and beyond the control of the party as held in Njoroge vs Kimani (Civil application Nai E049 of 2022 (2022) KECCA 1188 (KLR) (28<sup>th</sup> October 2022 (Ruling).
8. Applying the foregoing guiding principles, the applicant has explained that what contributed to the delay was the adduction of further evidence after the initial judgment in February 2023. The issue before the trial court was whether the suit land was subject to trust. The trial court, in a judgment dated 15.2.2023, delivered a partial judgment and directed the parties to adduce further evidence on whether the 1<sup>st</sup> defendant had allocated the plaintiff another land.
9. The court has looked at the circumstances of the application as well as the grounds of appeal in the draft memorandum of appeal. The issues raised in the memorandum of appeal are not idle but arguable. The respondent has not opposed the application. I find it is in the interest of justice to grant the reliefs sought. The memorandum of appeal shall be filed and served within 4 days from the date hereof.

File closed.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 13<sup>TH</sup> NOVEMBER, 2024**

In presence of

C.A Kananu

Asuma for Mutembi for the applicant

**HON. C K NZILI**

**JUDGE**

