



**Matete v Simiyu & another (Environmental and Land Originating Summons
3 of 2017) [2024] KEELC 13980 (KLR) (17 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13980 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 3 OF 2017
EC CHERONO, J
DECEMBER 17, 2024**

BETWEEN

RICHARD BARASA MATETE PLAINTIFF

AND

ROBAI NAKUMICHA SIMIYU 1ST DEFENDANT

CALEB PEPELA SIMIYU 2ND DEFENDANT

RULING

1. This ruling is to determine the application dated 22/07/2024 which seeks the following orders;
 - a. That this application be certified urgent and he same be heard on a priority basis.
 - b. That this honourable court be pleased to enlarge the applicants time within which to file an appeal against the judgment of the honourable court delivered on the 07/03/2024.
 - c. That this honourable court be pleased to enlarge the applicants time within which to file an appeal against the judgment of the honourable court delivered on 07/03/2024.
2. The application is supported by the affidavit of Joseph Caleb Pepela Simiyu, the Applicant herein sworn on 22/07/2024. The Applicant stated that being aggrieved by the judgment of this court delivered on 07/03/2024, he is desirous of lodging an appeal before the court of appeal. He stated that this application has been filed promptly after he became aware of the impugned judgment sometime in June this year since his advocate on record was hospitalized. This court is asked to exercise its jurisdiction by allowing the appeal.
3. The Respondent filed a replying affidavit sworn on 06/08/2024 where he stated that the Applicant was fully aware of the judgment date and even then, he was duty bound to follow up on his case. That the reasons in the supporting affidavit are therefore flimsy. Further, the Respondent contends that the



- Applicant has not satisfied the conditions for the grant of the orders sought. He sought to have the application dismissed.
4. Directions were taken to canvass the application by way of written submissions.
 5. The Applicant filed submissions dated 05/07/2024 where he urged the court to be guided by the principles in the case of Nicholas Kipruto arap Korir Salat vs. Independent Electoral and Boundaries Commission & 7 Others (2014) eKLR.
 6. The Respondent filed submissions dated 03/10/2024 and cited the case of County Government of Meru vs. Leopard Rock Mico Limited (Civil Application E011 of 2021). He argued that the Applicants did not give sufficient reasons for the extension of time and that they did not even attach a notice of appeal to their application. The Respondent also argued that this court is functus officio and has no jurisdiction to handle the current application which is a preserve of the Court of Appeal. Reliance was placed in the case of Sokoro Savings and Credit Co-operative Society LTD Vs. Mwamburi (Civil Application E032 of 2022) [2023] KECA 381(KLR).

Legal Analysis and Decision

7. I have considered the application, the supporting affidavit and the response to the application by the Respondent together with the rival submissions by the parties and I find that the issue for determination is whether this court has the jurisdiction to grant the orders sought and in which orders are applicable in the circumstances.
8. The application is for enlargement of time to file an appeal from a decision of his court to the Court of Appeal. It is trite that an appeal lying from a decision of the High court is the preserve of the Court of Appeal according to Section 66 of the [Civil Procedure Act](#) and Section 3 of the [Appellate Jurisdiction Act](#), Cap 3 Laws of Kenya and the procedure for institution of such an appeal is set down in the Court of Appeal Rules.
9. The [Court of Appeal Rules](#) (CAR) on extension of time and lodging an appeal states as follows; -
 4. Extension of time
The court may, on such terms as it thinks just, by order extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.
10. Section 7 of the [Appellate Jurisdiction Act](#) provides;
 7. Power of High Court to extend time
The High Court may extend the time for giving notice of intention to appeal from a judgment of the High Court or for making an application for leave to appeal or for a certificate that the case is fit for appeal, notwithstanding that the time for giving such notice or making such appeal may have already expired:
11. In the case of [Diamond Trust Bank of Kenya Limited -vs- Invesco Assurance Company Limited and Another](#) [2021] eKLR, the court held as follows:-

In view of the above provisions, it is explicitly clear that the High Court may extend time for giving Notice of Intention to Appeal from a judgment of the High Court and in my view the said Section 7 does not need any more than a literal interpretation. Therefore, Section 7 of the [Appellate Jurisdiction Act](#) clearly confers to the High Court jurisdiction to extend time



for the filing of a Notice of Appeal and to decide otherwise is akin to completely disregarding a clear provision in the law.”

12. Guided by the above provisions and case law, this Court has jurisdiction to grant the orders sought.
13. The next question for determination is whether this court is sufficiently persuaded to exercise its discretion in favour of the Applicant. The principles for allowing or disallowing such a prayer were set out by the Supreme Court in the case of *Nicholas Kiptoo Arap Korir Salat –vs- Independent Electoral and Boundaries Commission & 7 Others* [2014]eKLR where the following principles were laid down:-
 - i. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court;
 - ii. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
 - iii. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case-to-case basis;
 - iv. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
 - v. Whether there will be any prejudice suffered by the Respondents if the extension is granted;
 - vi. Whether the application has been brought without undue delay; and
 - vii. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”
14. I have considered the application in light of the principles that guide this court in the exercise of its discretionary jurisdiction when determining an application for extension of time. The first question to be answered is whether the applicant has tendered a satisfactory explanation for the delay in filing the notice of appeal. The respondent has argued that the applicant has filed the current application very late in the day and no sufficient explanation has been supplied for the said delay. The Applicant on the other hand argues that his advocate on record was hospitalized for a long time and that he only became aware of the court’s judgment in June 2024. It is common ground that the court delivered its judgment on 07/03/2024 and that this application was filed on 30/7/2024 which is about 5 months later. The delay is said to be as a result of the counsel’s indisposition.
15. However, the question that begs answers is whether the Applicants were indolent in following up with the office of the advocate on the status of their case. It is important to note that cases belong to the parties and not the advocate and it is upon the party to ensure that they are always well aware of the status of their case. The Applicants herein have attached ‘whatsapp’ messages between them and their advocates. However, this court is not convinced of the efforts made by the Applicants to know the status of their case. The said messages in my view seem to be messages of “goodwill” moreso checking up on counsel as opposed to finding out the position of their case.
16. In the end, the application dated 22/7/2024 lack merit and the same is hereby dismissed with costs.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 17TH DAY OF DECEMBER, 2024.

HON.E.C CHERONO

JUDGE

In the presence of;



M/S Mukanda H/B Nakitare for the Defendant/Applicant

Plaintiff/Advocate-absent

Bett C/A

