



**Manyani Road Residents' Association (MARA) v Bell Kenya Limited & another (Environment & Planning Appeal E008 of 2024) [2024] KEELC 13857 (KLR) (9 December 2024) (Judgment)**

Neutral citation: [2024] KEELC 13857 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & PLANNING APPEAL E008 OF 2024  
AA OMOLLO, J  
DECEMBER 9, 2024**

**BETWEEN**

**MANYANI ROAD RESIDENTS' ASSOCIATION (MARA) ..... APPELLANT**

**AND**

**BELL KENYA LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY EXECUTIVE COMMITTEE MEMBER BUILT ENVIRONMENT &  
URBAN PLANNING ..... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal from the Determination of the Physical and Land Use Planning Liaison Committee dated 7th March 2024 in Appeal No. NCCG/PLUPLC/005/2024)*

**JUDGMENT**

**Background:**

1. Before the Court for determination is an appeal dated 21<sup>st</sup> March 2024 and filed on 28<sup>th</sup> March 2024. The Appellant is appealing a determination of the Physical and Land Use Planning Liaison Committee (hereinafter 'the Liaison Committee') dated 7th March 2024 in Appeal No. NCCG/PLUPLC/005/2024. The Appellant filed an application seeking enlargement of time to file an appeal on 13<sup>th</sup> February 2024. The Appellant then initiated proceedings before the Liaison Committee by filing a Statement of Appeal dated 14<sup>th</sup> February 2024. The Appellant was appealing against the decision of the County Executive Committee Member to grant approvals to the 1<sup>st</sup> Respondent in contravention of the zoning laws and other statutory requirements. The Appellant was seeking a revocation of the above-mentioned grant as well as the granting of development permission that was in line with the zoning laws.
2. The 1<sup>st</sup> Respondent filed a preliminary objection noting that the Liaison Committee did not have the jurisdiction to hear the appeal as per the provisions of Sections 61(3) of the [Physical and Land Use](#)



*Planning Act* and Section 35(g)(I) of the *Physical and Land Use Planning Act* Regulations. The 2<sup>nd</sup> Respondent also filed a replying affidavit to the statement of appeal. It was stated that the development permission was issued to the 1<sup>st</sup> Respondent after the 2<sup>nd</sup> Respondent had satisfied itself that all the necessary procedures had been followed by the 1<sup>st</sup> Respondent.

3. The Liaison Committee rendered its determination on 7<sup>th</sup> March 2024. It noted that the preliminary objection succeeded on two grounds. First, that for an application for enlargement of time to be considered, it should be filed first and once granted the appeal should follow. Second, a section of the committee believed that the Liaison Committee lacked the jurisdiction to enlarge time. The Liaison Committee determined that the appeal was struck out for being time barred.

### **Memorandum Of Appeal**

4. The Appellant was aggrieved by the above stated determination by the Liaison Committee and filed the instant appeal. The Appellant is seeking orders that:
  - a. The determination of the Physical and Land Use Planning Liaison Committee dated 7<sup>th</sup> March 2024 be set aside and/or varied.
  - b. The Court does find that the Committee is seized of the jurisdiction to enlarge time to file the appeal.
  - c. The Court be pleased to reinstate the Appellant's appeal dated 14<sup>th</sup> February 2024 for full hearing and determination before the Physical and Land Use Planning Liaison Committee.
  - d. Costs of the appeal in the superior Court be awarded to the Appellant.

### **Submissions**

5. The appeal was heard by way of written submissions. The Appellant filed submissions on 15<sup>th</sup> July 2024. The first issue for determination was stated as: Whether the Committee has discretion to enlarge time for filing an appeal. The Appellant submitted that the *Physical and Land Use Planning Act* provides for the establishment of the Liaison Committee to handle any appeals and complaints arising from physical and land use development plans. It was submitted that Liaison Committee should hear and determine the said complaints at the first instance. Sections 61(3) and 78 of the *Physical and Land Use Planning Act* and the case of Speaker of the National Assembly v Karume [1992] KECA 42 (KLR) were relied upon.
6. It was further submitted that while the *Physical and Land Use Planning Act* provides strict time lines for aggrieved parties to act, the Court should note that it is difficult for the said parties to know when decisions have been made by the planning authority. The result is that by the time they approach the Liaison Committee, the time for redress has already passed. Relying on the case of Riunga v County Planning Committee, Nairobi City County & 2 others [2022] KEELC 13604 (KLR), the Appellant submitted that the committee has authority to enlarge time for the filing of an appeal.
7. The second issue raised for determination is: Whether the Appellant's appeal should be reinstated and heard on merit by the Liaison Committee. The Appellant submitted that the Liaison Committee erred in determining the preliminary objection on the appeal before considering the application for enlargement of time. It was submitted that the Liaison Committee should have considered the application first and then determined the next course of action. It was also submitted that the Appellant had a right to be heard and that where a statutory dispute resolution mechanism exists, it should be exhausted before involving the Courts. Article 50(1) of *the Constitution* and the cases of Adegwa & 2 others v Kibos Distillers Limited & 5 others [2020] KESC 36 (KLR) and Catherine Chepkemoi



Mukenyang v Evanson Pkemei Lomaduny & The County Assembly of West Pokot [2022] KEHC 1548 (KLR).

8. The 1<sup>st</sup> Respondent filed submissions on 23<sup>rd</sup> September 2024 and in answering the question of; Whether the Committee has discretion to enlarge time for filing an appeal. It was submitted that the eight-month delay by the Appellant in filing the statement of appeal was unexplainable and lethargic considering that construction was on going on the suit property. Relying on the case of Eastleigh Mall Limited v Commissioner of Investigations & Enforcement [2023] KEHC 20000 (KLR) the 1<sup>st</sup> Respondent submitted that the time lines set out in Section 61(3) of the *Physical and Land Use Planning Act* should be adhered to strictly to protect the developer from significant loss.
9. It was further submitted that the Appellant had not directed the Court to any provision of law that bestowed the jurisdiction to extend time on the Liaison Committee. It was also noted that the Appellant filed the appeal out of time without the leave of the Liaison Committee thus rendering it fatally defective. The cases of Nicholas Kiptoo Arap Korir Salat v Independent Electoral And Boundaries Commission, Wilfred Rotich Lesan, Robert Shunet (County Returning Officer), Bomet County, Kennedy Onchayo, Wilfred Wainaina, Patrick Wanyama, Mark Manko & Abdikadir Sheikh [2013] KEHC 399 (KLR) and Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] KESC 8 (KLR) were relied upon.
10. The second issue for determination was stated as: Whether the Court has jurisdiction to reinstate Appeal No. NCCG/PLUPLC/005/2024. It was submitted that in view of the fact that the Appeal is fatally defective, it should not be reinstated nor remitted back to the Liaison Committee. Relying on the case of Charles N. Ngugi v ASL Credit Limited [2022] KEHC 1951 (KLR), the 1<sup>st</sup> Respondent submitted that there are factors to be considered when allowing an appeal out of time and that it would be a miscarriage of justice for the Court to grant such orders suo moto where they have neither been sought nor justified by the aggrieved party.
11. The 1<sup>st</sup> Respondent submitted that the Liaison Committee lacked jurisdiction to hear and determine the appeal and the Court cannot consequently clothe it with such jurisdiction. Consequently, the 1<sup>st</sup> Respondent submitted that the prayers sought by the Appellant cannot be granted by the Court. The cases of Riunga v County Planning Committee, Nairobi City County & 2 others [2022] KEELC 13604 (KLR) and Palvance Construction Ltd v National Government Constituency Development Fund [2022] KEHC 16311 (KLR) were relied upon.

### **Analysis And Determination**

12. This is a first appeal and this court is clothed with jurisdiction to re-evaluate the proceedings undertaken before the Liaison Committee. After perusal of the appeal and the submissions, the following issues arise for determination.
  - i. Whether the Liaison Committee Erred in Not Considering the Application to Enlarge Time First
  - ii. Whether the Liaison Committee Erred in Finding That it Does Not Have the Jurisdiction to Enlarge Time
  - iii. Whether the Case Before the Liaison Committee Should Be Reinstated

### **Whether the Liaison Committee Erred in Not Considering the Application to Enlarge Time First**

13. The Appellant averred that the Liaison Committee erred in considering the preliminary objection on the appeal before considering the application to enlarge time. In its determination, the Liaison



Committee noted in the introduction that the statement of appeal was filed on 27<sup>th</sup> February 2024. It further noted that the statement of appeal was filed alongside other documents including an application for enlargement of time dated 13<sup>th</sup> February 2024. Elsewhere in the determination, the Liaison Committee stated that: A section of the committee believes for an application for enlargement of time to be considered it can only be filed first and once granted leave then the appeal can be filed. The Liaison Committee relied on the case of *Nicholas Kiptoo Arap Korir Salat v Independent Electoral And Boundaries Commission (Supra)* to support this assertion.

14. According to the record of appeal, the statement of appeal is dated 14<sup>th</sup> February 2024 but was filed with the Liaison Committee on 21<sup>st</sup> February 2024. The application for enlargement of time is dated 13<sup>th</sup> February 2024. There is no stamp evidencing that it was separately received by the Liaison Committee. The Notice of Motion seeking the enlargement of time was not filed as a stand-alone application but as part of documents filed alongside the statement of appeal.
15. The Liaison Committee was aware of the application for enlargement of time and they had the powers to give directions on the prosecution of that application. Article 159 (2) of *the Constitution* of Kenya 2010 provides as below;

“In exercising judicial authority, the courts and tribunals shall be guided by the following principles:

- (d) justice shall be administered without undue regard to procedural technicalities; and
- (e) the purpose and principles of this Constitution shall be protected and promoted.”

16. The Liaison Committee acts as a quasi-judicial body hence they have an obligation to comply with the constitutional provisions which in this case was to avoid prioritising procedural technicalities. As it were, while determining the preliminary objection raised by the Respondent which touched on the merits of the application for enlargement of time, they erred in deciding on the p.o and the appeal and not the application. Had the application been found to be merited, the Liaison Committee had powers to direct the statement of appeal filed out of time deemed as now duly filed or ordered the filing of a fresh statement of appeal within timelines set.

### **Whether the Liaison Committee Erred in Finding that It Did Not Have the Jurisdiction to Enlarge Time**

17. Section 61 (3) of the *Physical and Land Use Planning Act* provides:

An applicant or an interested party that is aggrieved by the decision of a county executive committee member regarding an application for development permission may appeal against that decision to the County Physical and Land Use Planning Liaison Committee within fourteen days of the decision by the county executive committee member and that committee shall hear and determine the appeal within fourteen days of the appeal being filed.

18. It is not in dispute that the statement of appeal before the Liaison Committee was brought in furtherance of the above stated section of law. It is also not in dispute that the statement of appeal was filed out of time. The Liaison Committee dismissed the appeal for being time barred. The Appellant averred that the circumstances leading to the filing of the appeal out of time were out of its control. The Appellant further averred that the Liaison Committee has the power to extend the time for the filing of such an appeal. The 1<sup>st</sup> Respondent stated that the time lines set by the applicable law should



be adhered to strictly. The 1<sup>st</sup> Respondent further stated that the Appellant had not led the Court to a provision of law expressly allowing the Liaison Committee to extend time. The Liaison Committee stated as follows in its determination: The other section of the committee believes the committee lacks jurisdiction to enlarge time. In both instances the preliminary objection succeeds.

19. Both parties relied on the *Riunga v County Planning Committee Case* (Supra). The Appellant averred that according to that case, the Liaison Committee can enlarge the time for filing of an appeal. The Respondent averred that according to the same case, an appeal filed out of time ought to be dismissed. In that case the Court stated as follows concerning when time starts to run:

First and foremost, to be able to determine whether the appeal was filed within time or otherwise, it is appropriate to determine when the Appellant was informed of the outcome of the impugned decision or better still when the Appellant became knowledgeable and aware of the existence of the impugned decision.

To start with, there is no dispute that the impugned decision was never directly/ personally disseminated nor communicated to the Appellant. Consequently, the determination of when time to appeal commenced to run is not premised on the date of communication, dissemination or service of the impugned order upon the Appellant.

To the contrary, the determination of when time to file the appeal commenced is dependent on when the Appellant discovered, established or became aware of the existence of the impugned decision. (Emphasis added)

20. The Appellant relied on the above emphasized paragraph to argue that the Liaison Committee has authority to enlarge the time for filing of an appeal. However, it is my considered view that that is not the case. The Court was merely stating what should be taken into account in computing time where the decision being appealed against was not directly served/communicated to the aggrieved party. In my understanding, the Court was stating that the fourteen days can be interpreted as beginning to run from a date that is different from when the decision was issued provided that it can be established that the different date was when the aggrieved party became aware of the impugned decision.
21. In the instant case, it is not clear which decision is being appealed against. It is also not clear when the Appellant became aware of the impugned decision. As per the statement of appeal, the Appellant stated that it was appealing the decision of the County Executive Committee Member made on 17<sup>th</sup> June 2023. The decision was not part of the Appellant's supporting documents. There is a letter on record written by the Appellant and addressed to the Director of Compliance and Enforcement, Nairobi County. It is dated 17<sup>th</sup> July 2023. It makes no reference to the impugned decision. There is a notification of approval of application on record. It was issued to the 1<sup>st</sup> Respondent on 21<sup>st</sup> February 2023. The Appellant did not state whether this was the decision it was appealing. In the absence of clarity on which decision was being appealed and as to when the Appellant became aware of such decision. The case of *Riunga v County Planning Committee* (Supra) comes to the aid of the Appellant when its application for enlargement of time was under consideration.
22. Having established that the above stated case did not expressly state that the Liaison Committee can enlarge the time for filing an appeal and a section of the Liaison Committee having determined that the Liaison Committee does not have the jurisdiction to enlarge time, it is now for the Court to consider that question. At this point it would be useful to consider the nature of quasi-judicial bodies like the



Liaison Committee. The Court in the case of Ahmad & another v Kadhi Mombasa; Khalifa & another (Interested Parties) [2021] KEHC 133 (KLR) defined a quasi-judicial body as follows:

Judicial bodies are the ordinary courts of law - such as the Supreme Court, High Courts and the subordinate courts. A quasi-judicial body is a non-judicial body which can interpret law. It is an entity such as an arbitrator or tribunal board, generally of a public administrative agency, which has powers and procedures resembling those of a court of law or judge, and which is obliged to objectively determine facts and draw conclusions from them so as to provide the basis of an official action.

23. It is also useful to consider what the Courts have said about extension of time. The Supreme Court in the case of Salat v Independent Electoral and Boundaries Commission & 7 others [2014] KESC 12 (KLR) stated as follows concerning time and the extension thereof:

Time is a crucial component in dispensation of justice, hence the maxim: Justice delayed is justice denied. It is a litigants' legitimate expectation where they seek justice that the same will be dispensed timeously. Hence, the various constitutional and statutory provisions on time frames within which matters have to be heard and determined.....A party may however, encounter some delay and the time within which he was to perform an act lapses. At Common Law, equity developed in the courts of Chancery Division to check the excess of common law. If one showed that he had a bona fide cause of action and time had lapsed, but was constrained to pursue within time that cause, because of some compelling reasons, the courts of the Chancery Division could intervene and indulge such a person if established that he was not at fault.

It is on this equitable under-pinning that courts in Common Law jurisdictions in exercise of their discretion now grant orders extending time. Presently, extension of time has now been given statutory backing with various legislations providing courts with the power to extend time.

Extension of time being a creature of equity, one can only enjoy it if he acts equitably: he who seeks equity must do equity. Hence, one has to lay a basis that he was not at fault so as to let time to lapse. Extension of time is not a right of a litigant against a court, but a discretionary power of the courts which litigants have to lay a basis where they seek courts to grant it.

24. The *Physical and Land Use Planning Act* is silent on whether the Liaison Committee can extend time for filing appeals. However, when extension of time is considered as a creature of equity that was extended to parties who had failed to meet set times through no fault of their own, then I find that the same power can be exercised by the Liaison Committee as when one considers the nature and circumstances of cases that are brought before the committee, it is possible that aggrieved parties could miss set deadlines through no fault of their own. The doors of justice should not be slam shut in the face of an aggrieved party who has missed the deadline set by statute because of circumstances beyond their control.

25. It is my considered view and so hold that a quasi-judicial body that interprets the law, has powers and procedures resembling a Court and which is required to objectively determine facts, should also have discretion to extend time where the circumstances of the case so dictate. That being said, such discretion should be exercised judicially. The Supreme Court in the case of Itolondo v Attorney General & 9 others [2021] KESC 44 (KLR) stated as follows:

This Court has set the guiding principles on extension of time in the Nick Salat Case as follows:



“... it is clear that the discretion to extend time is indeed unfettered. It is incumbent upon the applicant to explain the reasons for delay in making the application for extension and whether there are any extenuating circumstances that can enable the Court to exercise its discretion in favour of the applicant.

“... we derive the following as the underlying principles that a Court should consider in exercising such discretion:

1. 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;
2. a party who seeks extension of time has the burden of laying a basis, to the satisfaction of the Court;
3. whether the Court should exercise the discretion to extend time, is a consideration to be made on a case- to- case basis;
4. where there is a reasonable [cause] for the delay, [the same should be expressed] to the satisfaction of the Court;
5. whether there will be any prejudice suffered by the respondents, if extension is granted;
6. whether the application has been brought without undue delay; and
7. whether in certain cases, like election petitions, public interest should be a consideration for extending time.”

Further, this Court has emphasized the need for the Applicant, in an application for extension of time, to satisfactorily declare and explain the whole period of delay to the Court in the case of County Executive of Kisumu Case.

26. Elsewhere the Court of Appeal in the case of Paul Musili Wambua v Attorney General, Association of Human Resource Practitioners of Kenya & Commission on Administrative Justice [2015] KECA 471 (KLR) stated as follows:

I have considered the rival submissions by both counsel, it is now well settled by a long line of authorities by this Court that the decision of whether or not to extend the time for filing an appeal the Judge exercises unfettered discretion. However, in the exercise of such discretion, the court must act upon reason(s) not based on whims or caprice. In general the matters which a court takes into account in deciding whether to grant an extension of time are; the length of the delay, the reason for the delay, the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted. (See MUTISO V MWANGI) [1999] 2 EA 231.

27. The import of the foregoing is the question as to whether the Liaison Committee has discretion to enlarge time should be answered in the affirmative when extension of time is considered purposively. Additionally, such discretion should be exercised in the manner that has been set forth by the superior courts.



28. The question now turns to whether the Liaison Committee erred in not exercising that discretion in the appeal that was before it. The Supreme Court in the case of *Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] KESC 12 (KLR) stated as follows:

By filing an appeal out of time before seeking extension of time, and subsequently seeking the Court to extend time and recognize such ‘an appeal’, is tantamount to moving the Court to remedy an illegality. This, the Court cannot do.

Where one intends to file an appeal out of time and seeks extension of time, the much he can do is to annex the draft intended petition of appeal for the Court’s perusal when making his application for extension of time; and not to file an appeal and seek to legalize it. Petition No. 10 of 2014 having been filed out of time and without leave (an order of this Court extending time), is expunged from the Court’s Record.

29. In the preceding section it was established that there was an application for enlargement of time that was filed. In fact, the application was dated earlier than the Statement of appeal. It was premature to strike out the appeal before determining the application for enlargement of time by the Liaison Committee. In view of the foregoing, I find that while the Liaison Committee had the discretion to enlarge the time for filing the appeal, the same should have been exercised in the instant case by giving directions on the hearing of that application.

#### **Whether the Case Before the Liaison Committee Should Be Reinstated**

30. The Appellant asked the Court to reinstate the claim before the Liaison Committee. The 1<sup>st</sup> Respondent stated that such an order cannot be granted as the claim that was struck out was fatally defective and there is consequently nothing to reinstate. I find that the case before the Committee be reinstated for hearing of the application to enlarge time on merits.
31. In light of the foregoing, I find that this appeal has merit and is hereby allowed with costs to the Appellant.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9<sup>TH</sup> DAY OF DEEMBER, 2024 VIA EMAIL TO PARTIES’ ADVOCATES.**

**A. OMOLLO**

**JUDGE**

