



Nteere (Suing as the legal representative of the Estate of Julius Nteere Muthamia) v Ndumba (Environment and Land Miscellaneous Application E037 of 2022) [2023] KEELC 47 (KLR) (18 January 2023) (Ruling)

Neutral citation: [2023] KEELC 47 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E037 OF 2022
CK NZILI, J
JANUARY 18, 2023

BETWEEN

SABELLA KAMBURA NTEERE (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF JULIUS NTEERE MUTHAMIA) APPLICANT

AND

BETHA NDUMBA RESPONDENT

RULING

1. The applicant by a notice of motion dated October 17, 2022 prays for both extension of time to appeal out of time against a judgment delivered in Meru CMCC No. ELC No. 212 of 2018 on August 4, 2022 and for the stay of execution of the said decree. The reasons for the delay are contained in the affidavit sworn on 13.10.2022 by Betha Ndumba.
2. There is no doubt that a court has unfettered discretion to extend time to appeal out of time. The principles to apply were expounded in *Nicholas Arap Korir Salat vs IEBC & 7 others* (2014) eKLR. The court has to consider the delay, reasons thereof, any extenuating circumstances; it is not a matter of right; the burden lies on the person applying to make out a proper case, the prejudice to the opposite party and the public interest of the matter must also be considered.
3. Further, in *Thuita Mwangi vs Kenya Airways Ltd* (2003) eKLR, the court held that the arguability of the appeal, the importance of compliance with time lines, the effect on the administration of justice and the period of the delay to be some of the considerations.
4. The judgment herein was delivered on August 4, 2022 while this application was filed on October 18, 2022. The delay of close to two and a quarter month is attributed to the typing and the issuance of the judgment. The applicant averred that he wrote a letter dated August 4, 2022 requesting for the typed and certified judgment. The letter was delivered before court on August 15, 2022. unfortunately,



the applicant has not clarified when the copy of the judgment was collected from the registry so as to attribute the delay to the court registry.

5. On his part, the respondent in a replying affidavit sworn on November 8, 2022 blames the applicant for the delay and not the court registry. She takes the view that a delay of close to 3 months is inadvertently long.
6. In *Visbva Stone Suppliers Co. Ltd vs RSR Stone (2006) Ltd* (2020) eKLR, the Court of Appeal said that the law does not set the maximum or minimum period of delay except to require an applicant's satisfactory explanation for the same as to unlock the flow of the court's discretionary powers with only caveat being a valid and clear reason. The court held that the right to a hearing is not only constitutionally entrenched but also the cornerstone of the rule of law.
7. Given the material before the court, I do not therefore find the delay inadvertently long or the explanation offered as unreasonable.
8. Coming to the prayer for stay of execution there is no pending appeal before the court in line with order 42 rule 6 of the *Civil Procedure Rules*.
9. I therefore find the prayer premature and speculative. Further there is no material put out for any substantial loss. See *James Wangalwa & another v Agnes Naliaka Cheseto* [2012] eKLR.
10. Consequently, the prayer for an extension of time is granted. The memorandum of appeal to be filed within 14 days from the date hereof. The prayer for stay of execution is hereby declined. There will be no order as to costs.
11. Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 18TH DAY OF JANUARY, 2023

HON. C.K. NZILI

ELC JUDGE

In presence of:

C/A: Kananu

No appearance

