



**Maina v Mwale (Environment & Land Miscellaneous Case  
E009 of 2022) [2023] KEELC 25 (KLR) (17 January 2023) (Ruling)**

Neutral citation: [2023] KEELC 25 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA  
ENVIRONMENT & LAND MISCELLANEOUS CASE E009 OF 2022  
DO OHUNGO, J  
JANUARY 17, 2023**

**BETWEEN**

**PATRICK CHIMELI MAINA ..... APPLICANT**

**AND**

**JULIUS MWALE ..... RESPONDENT**

**RULING**

1. By notice of motion dated March 23, 2022, the applicant seeks the following orders:
  - a. [Spent]
  - b. That, this honourable court be pleased to issue orders for leave to file the applicant's appeal out of time against the ruling of honourable of (sic) the learned trial magistrate Hon F Makoyo PM in Butere ELC NO 66/2018 dated the November 18, 2021.
  - c. That, the cost of this application abide the outcome of the appeal..
2. The application is supported by an affidavit sworn by the applicant. He deposed that he was dissatisfied with the decision of the subordinate court but did not file an appeal on time owing to a delay in typing of proceedings. That he requested for typed proceedings on November 22, 2021 and paid for them on the same date. Additionally, he deposed that his appeal raises arguable issues and that he was unrepresented in the proceedings before the subordinate court. Although prayer (b) of his application refers to a ruling, it is apparent that what was delivered on November 18, 2021 is judgment. He annexed a copy of the judgment and not a ruling.
3. The respondent opposed the application through grounds of opposition in which he took the position that the applicant has not demonstrated any sufficient cause for the delay, that the application is defective, and that the applicant is guilty of material non-disclosure.



4. By consent of the parties, an order was made that the application be canvassed through written submissions. The applicant filed submissions on June 15, 2022, while the respondent, despite claiming that he had filed submissions, did not put any on record. Relying on the case of *Kenya Railways Corporation v Erdemann Property Limited* [2012] eKLR and *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* - Civil Application No NAI 255 of 1997 (unreported) as cited in *Equity Bank Limited v Richard Kerochi Ayiera* [2020] eKLR, the applicant argued that the delay was neither inordinate nor unreasonable and urged the court to allow the application.
5. I have carefully considered the application, the affidavits, and the submissions.
6. The principles applicable to an application for extension of time were identified by the Supreme Court in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR as follows:

This being the first case in which this court is called upon to consider the principles for extension of time, we derive the following as the under-lying principles that a court should consider in exercise of 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 for 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. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
  5. Whether there will be any prejudice suffered by the respondents if the extension is granted;
6. Whether the application has been brought without undue delay; ...
  7. I now apply those principles to the present case. The judgment and decree that is sought to be appealed against was passed by the subordinate court on November 18, 2021 in exercise of its environment and land jurisdiction pursuant to section 9 (a) of the *Magistrates' Courts Act*, 2015 as read with section 26 of the *Environment and Land Court Act*, 2011. In terms of Section 16A (1) of the *Environment and Land Court Act*, 2011, the applicants were required to file any appeal against the decree to this court within 30 days of delivery of the judgment. Nevertheless, this court can, pursuant to section 16A (2) of the Act, admit an appeal out of time if the appellant satisfies the court that he had a good and sufficient cause for not filing the appeal in time. In the present case, the appeal ought to have been filed not later than December 18, 2021. I note that at ground 9 of the notice of motion, the applicant stated that he filed the memorandum of appeal on March 17, 2022. He annexed a copy of the memorandum of appeal as annexure KW-5 to his supporting affidavit. A perusal of the said annexure confirms that the appeal was indeed filed on March 17, 2022 and that its case number is Kakamega ELC Appeal No E005 of 2022. The present application was filed on March 25, 2022. There was thus a delay of three months.
  8. The applicant's contention that he requested for typed proceedings on November 22, 2021 and paid for them on the same date is supported by the material on record. He annexed a certificate of delay issued to him by the subordinate court indicating that the typed and certified proceedings were ready for collection on March 24, 2022. Although strictly speaking, a litigant does not require typed and



certified proceedings to draft and file a memorandum of appeal, the applicant attributed the delay partly to being self-represented in the proceedings before the subordinate court. The respondent did not file any affidavit to challenge the contention that the applicant was self-represented. I appreciate that a self-represented litigant may not always be as meticulous as counsel.

9. Considering that the appeal was filed on March 17, 2022 and that the present application was filed a day after the typed and certified proceedings had been availed, I find that both the application and the appeal were filed without undue delay and that the applicant has laid a sufficient basis to warrant exercise of discretion in his favour. I find merit in the application.
10. I therefore make the following orders:
  - a. Leave is hereby granted to the applicant to file an appeal against the judgement and decree delivered on November 18, 2021 in Butere SRM ELC Number 66 of 2018, out of time.
  - b. Kakamega ELC Appeal No E005 of 2022 which was filed on March 17, 2022, against the judgement and decree delivered on November 18, 2021 in Butere SRM ELC Number 66 of 2018, is hereby admitted out of time and deemed to have been filed within time.
  - c. Costs of notice of motion dated March 23, 2022 shall be in the appeal.

**DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 17TH DAY OF JANUARY 2023.**

**D. O. OHUNGO**

**JUDGE**

Delivered in open court in the presence of:

Applicant present

Mr Mulama holding brief for Mr Munzala for the respondent

Court Assistant: E. Juma

