



**Minyori & another v Ntonjira (Miscellaneous Civil Application
E097 of 2023) [2024] KEHC 2099 (KLR) (29 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 2099 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
MISCELLANEOUS CIVIL APPLICATION E097 OF 2023
EM MURIITHI, J
FEBRUARY 29, 2024**

BETWEEN

RONALD GITONGA MINYORI 1ST APPLICANT

JANE GITONGA 2ND APPLICANT

AND

NKATHA JANE NTONJIRA RESPONDENT

RULING

1. By an application under certificate of urgency dated 22nd August 2023 pursuant to sections 1A, 1B, 3A, 79G and 95 of the *Civil Procedure Act*, order 50 rule 6 of the *Civil Procedure Rules* and article 50 of the *Constitution*, the Applicants seek; “2. That this Honorable Court be pleased to grant leave to the Applicant to file an appeal out of time in respect of the Judgment issued by the Honorable trial court on January 14, 2019.”
2. The application is supported by the grounds that after the delivery of the impugned judgment on 14/1/2019, the 2nd Applicant applied to be furnished with the said judgment on the same day, which was belatedly availed on 23/9/2023. The 2nd Applicant avers that the intended appeal could not be filed without the aforesaid judgment, and unless the orders sought are granted, she stands to suffer great prejudice and irreparable loss and damage. She avers that the memorandum of appeal and the record of appeal are ready for filing.
3. The Respondent fervently opposed the application *vide* her replying affidavit sworn on 11/10/2023. She avers that the matter in the lower court involved compensation for serious injuries that she sustained as a result of a road traffic accident involving the applicant’s motor vehicle. The matter was fully heard and concluded and judgment pronounced on 14/1/2019 in the presence of all the parties and their counsel on record. It is now 2 years and 10 months since the date of the judgment and no appeal was preferred, and the allegation that the file was taken for typing for all that period cannot



be believed. If the file was availed on 23/9/2022, it beats logic why the applicants did not file this application then. There is no evidence that the applicants paid court fees for the typing of the judgment and there is no certificate of delay to support the application. The application is a mere afterthought intended to deny her the fruits of the judgment, as the annexed draft memorandum of appeal raises no issues.

Submissions

4. The Applicants urge that the delay in filing the appeal was occasioned by a genuine mistake of not getting the judgment on time, and cite *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* Civil Application No. Nai. 255 of 1997 (UR) and *Dilpack Kenya Limited v William Muthama Kitonyi* [2018] eKLR. They urge that the application has merit and they have demonstrated that they have an arguable appeal.
5. The Respondent urges that the reason for the delay of 3 years has not been sufficiently explained and the appeal has no chances of success.

Determination

6. The principles for consideration on an application for extension of time to appeal out of time are well established that the power is discretionary, and unfettered but, the applicant must prove to the satisfaction of the court that, the delay is not inordinate, reasons for delay must be plausible, that the appeal is arguable and not flippant and lastly that the respondent will not unduly prejudiced by the order sought. (See *Paul Musili Wambua v Attorney General & 2 others* [2015] eKLR).
7. The delay in filing the intended appeal has been attributed to the unavailability of the copy of the impugned judgment. The court notes the letter by the Applicants' counsel dated 23/11/2022 requesting for a copy of the judgment. There is no other evidence on record to show that the Applicants had unsuccessfully tried to obtain the said judgment after its delivery on 14/1/2019 or soon thereafter. This court frowns upon the Applicants' indolence in seeking its indulgence approximately 3 years after the impugned decision was made.
8. It is discernable from the annexed draft memorandum appeal that the grounds raised therein are not frivolous to be said to be inarguable.
9. The Applicants' contention that the Memorandum of Appeal together with the Record of Appeal are ready for filing is duly noted.
10. This court will, in the interest of justice, exercise its discretion in favour of the Applicants, the inordinate and unexplained delay notwithstanding.

Orders

11. Accordingly, for the reasons set out above, the Court allows the application for extension of time dated 22/8/2023 in the following terms:
 1. The Applicants are granted leave to file their Appeal out of time.
 2. The Record of Appeal shall be filed within 14 days from today, in default of which the appeal shall stand as dismissed.
 3. Pursuant to order 50 rule 6 of the *Civil Procedure Rules* the appellant/applicant shall pay to the respondent the costs for the application.

Order accordingly.



DATED AND DELIVERED ON 29TH DAY OF FEBRUARY, 2024.

EDWARD M. MURIITHI

JUDGE

Appearances:

M/S Kiautha Arithi & Co. Advocates for the Applicant.

M/S Ayub Anampiu & Co. Advocates for the Respondent.

