



**Barasa v Ramoya & 2 others (Civil Application E052 of 2022)  
[2022] KECA 1072 (KLR) (7 October 2022) (Ruling)**

Neutral citation: [2022] KECA 1072 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CIVIL APPLICATION E052 OF 2022  
PO KIAGE, JA  
OCTOBER 7, 2022**

**BETWEEN**

**STEPHEN OKOTA BARASA ..... APPLICANT**

**AND**

**MICHAEL RABARE RAMOYA ..... 1<sup>ST</sup> RESPONDENT**

**RAJAB IBRAHIM WESONGA ..... 2<sup>ND</sup> RESPONDENT**

**BRIAN OSINYA WANYAMA ..... 3<sup>RD</sup> RESPONDENT**

*(An application for extension of time to file the Memorandum of Appeal and Record of Appeal against the Judgment of the Environment and Land Court at Busia (A. Omolo, J.) dated 29th October, 2020 in ELC No. 36 of 2016)*

**RULING**

1. The applicant, Stephen Okota Barasa, has filed a notice of motion dated April 6, 2022 seeking the following order;
  - b. That the applicant be granted leave to file and serve the respondents with the memorandum of appeal and record of appeal out of time or at the time this honourable court may deem fit.
2. The grounds on the face of the application are that once the impugned judgment was delivered on October 29, 2020, the applicant's former advocate lodged a notice of appeal on October 30, 2020. The applicant realized that his advocates had not instituted the appeal when the respondents commenced the execution of the decree. He then instructed the firm of M/s Nandwa & Company advocates who successfully obtained the typed proceedings on October 25, 2021. He sought for extension of time in the interest of justice whilst blaming his former advocates for the delay in lodging the appeal. The applicant maintained that under the circumstances the delay was not inordinate and that the respondents will not suffer any prejudice if this relief is granted.



3. In opposition, the respondents gave context to the events leading to this application. They were served with the notice of appeal on November 9, 2020. The respondents noted that the applicant has already obtained the typed proceedings yet he neglected to serve them with the letter bespeaking them. On July 14, 2021, the applicant was served with a notice to show cause why a warrant of arrest should not issue. This was pursuant to a taxation of the respondents' bill of costs on May 12, 2021 where the applicant's former counsel was present and even filed submissions.
4. Subsequently, the applicant's current advocates came on record on August 3, 2021. Thereafter, the applicant obtained a stay order, from this court on September 28, 2021. The applicant then filed this instant application on April 6, 2022 without any explanation as to the cause of delay. Contrary to the applicant's assertion, the respondents shall be prejudiced if this relief is granted as the order of stay has prevented them from processing their titles in execution the judgment of the High Court.
5. I have considered the application for extension of time, the grounds in support thereof, the replying affidavit filed by the respondents the submissions as well as the law. As I exercise my free and unfettered discretion in this rule 4 application, I shall be guided by the laid down principles as espoused by this Court in *Muringa Company Ltd v. Archdiocese Of Nairobi Registered Trustees* , Civil Application No 190 of 2019 where the factors to consider were stated as;

Some of the considerations, which are by no means exhaustive, in an application for extension of time include the length of the delay involved, the reason or reasons for the delay, the possible prejudice, if any, that each party stands to suffer, the conduct of the parties, the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal, the need to protect a party's opportunity to fully agitate its dispute, against the need to ensure timely resolution of disputes; the public interest issues implicated in the appeal or intended appeal; and whether, *prima facie*, the intended appeal has chances of success or is a mere frivolity."

6. The record reflects that it took the applicant slightly over 1 year 5 months to file this application. Prior to this, he claimed that he was unaware that his former advocates failed to file the appeal till, as averred by the respondents, he was served with a notice to show cause. Even so, once he appointed his current advocates, it took them another 8 months to file this application. Other than the applicant blaming his former advocates, no explanation has been proffered for this delay.
7. This court has been clear on numerous occasions that even though there is no set minimum period of delay, any delay, no matter how slight, must be satisfactorily explained. See *Andrew Kiplagat Chemaringo v. Paul Kipkorir Kibet* [2018] eKLR. I am convinced that the applicant went to slumber as soon the notice of appeal was filed. He did not diligently follow up with his former advocates, who were still representing him in the taxation matter, as is evidenced by his discovery of the mishap after 8 months. The reason why he hurriedly appointed his current advocates was because of the notice to show cause that threatened his arrest. I am persuaded that no reasonable or plausible explanation has been provided for the applicant's obvious indolence in this matter. I find that the delay was inordinate and, without any explanation proffered, inexcusable.
8. In the result, I decline to grant the prayer to extend time and accordingly dismiss the application in its entirety with costs.

**DATED AND DELIVERED AT KISUMU THIS 7<sup>TH</sup> DAY OF OCTOBER, 2022**

**P. O. KIAGE**

.....



**JUDGE OF APPEAL**

*I certify that this is a true copy of the original.*

*Signed*

**DEPUTY REGISTRAR**

