



**Registered Trustees of Edelvale v Sisters of Good Shepherd & Registered  
Trustee & another (Civil Miscellaneous Application E289 of 2024)  
[2024] KEHC 13513 (KLR) (Civ) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13513 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL MISCELLANEOUS APPLICATION E289 OF 2024**

**AN ONGERI, J**

**OCTOBER 31, 2024**

**BETWEEN**

**REGISTERED TRUSTEES OF EDELVALE ..... APPLICANT**

**AND**

**SISTERS OF GOOD SHEPHERD & REGISTERED TRUSTEE .... 1<sup>ST</sup>  
RESPONDENT**

**CATHERINE MUTINDI KIVUTI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The applicants filed the application dated 11/04/2024 brought under Article 159 of *the Constitution*, Section, 14,1B, 3A and 70g of the *Civil Procedure Act* and Order 42 Rule 6 of the Civil Procedure rules and All other enabling provisions of Law seeking the following orders;
  - i. That this application be certified as urgent and the same be heard on priority basis.
  - ii. That this Honourable Court be pleased to grant leave to the Applicant to file an appeal out of time against the ruling and order of Hon. Wendy Kagendo sitting at Milimani Commercial court delivered on 30<sup>th</sup> November 2023 in Milimani MCCC/4985/2022.
  - iii. That this Honourable Court be pleased to issue orders for stay of Execution of the Orders of Hon. Wendy Kagendo issued on 30<sup>th</sup> November 2023 and all subsequent orders in Milimani MCCC/4985/2022-Registered Trustees of Edelvale Vs Sisters of Good Shepherd & Registered Trustees & Catherine Mutindi Kivuti pending the hearing and determination of this application.



- iv. That this Honourable Court be pleased to issue orders for stay of Execution of the Orders of Hon. Wendy Kagendo issued on 30<sup>th</sup> November 2023 and all subsequent orders in Milimani MCCC/4985/2022-Registered Trustees of Edevale Vs Sisters of Good Shepherd & Registered Trustees & Catherine Mutindi Kivuti pending the hearing and determination of the Intended Appeal
  - v. That this Honourable Court be pleased to issue orders for stay of proceedings in Milimani MCCC/4985/2022-Registered Trustees of Edevale Vs Sisters of Good Shepherd & Registered Trustees & Catherine Mutindi Kivuti pending the hearing and determination of this application.
  - vi. That the costs of this application be in the intended Appeal.
2. The application is supported by the affidavit of James Muchungu Ndungah dated 11/4/2024 in which he stated that the Trial court delivered a ruling on 30/11/2023 on the applicant's application dated 4/10/2022 and the applicant's preliminary objection to the respondent's counter claim dated 8/5/2023 and the respondent's application dated 11/4/2023.
  3. The applicant being aggrieved by the said ruling, intends to appeal against the said decision.
  4. He stated that the court directed parties to negotiate the issues in the dispute with a view of reaching an amicable solution but the same did not materialize. The said ruling necessitated a meeting of all the trustees of the applicant to discuss the import of the said ruling.
  5. It took over two months to secure the attendances of all the trustees. In the meeting it was resolved that an appeal against decision of the court limiting the trustee's powers be lodged since it has resulted to a standstill of operations of the trust.
  6. He stated that the applicant is desirous of filing and prosecuting an appeal as against the ruling.
  7. That the delay in filing the appeal was caused by factors beyond the applicant's control. He indicated that the application herein has been brought in utmost good faith and in line with the prevailing circumstances.
  8. The respondent filed a replying affidavit by Sr Catherine Mutindi Kivutui dated 1/5/2024. In it she stated that the application herein is an afterthought and an abuse of court process.
  9. She deponed that in a Ruling dated 30/11/2023 the lower court ordered a temporary injunction impeding the transfer and interference of the suit property.
  10. That on 27/3/2024 Tabitha Njambi Kariuki, Mary Ida Mutinda, Jane Waruguru Kimathi and 2 other strangers' travelled from Nairobi to Mombasa and invaded Mombasa/Mainland South/Block v/98. The OCPD of Likoni, the OCS and the Deputy OCS Shelly Beach however intervened and they left the property.
  11. She deponed that some of the trustees of the Plaintiff/applicant are in contempt of the orders issued by the court on 30/11/2023 and are meant to file their responses on 8/4/2024 for the hearing on the same.
  12. She averred that the intended appeal herein is intended to prevent the contempt of court proceedings and the suit in the lower court from proceeding.
  13. The parties filed written submissions as follows; the applicant submitted that after the ruling the court advised the parties to negotiate with a view of reaching an amicable and sustainable solution which caused a delay in filing the instant application as it did not materialize. The applicant further argued



- that it also took time to convene a meeting of its registered trustees to discuss the way forward on the ruling.
14. The applicant submitted that a ruling was delivered on 30/11/2023 and given the provision of order 50 rule 4 of the Civil Procedure Rules the appeal ought to have been filed on or before 22/1/2024. The present application was filed on 11/4/2024 hence the delay is approximately 3 months which the applicant argued was not inordinate.
  15. The applicant submitted on stay of execution that the main issue in dispute between the parties is the trusteeship of the applicant where the respondent is attempting to forcefully take over trusteeship of the applicant.
  16. That in the present matter the applicant will suffer substantial loss if the orders sought are not granted in that the impugned order converts the tenure of its trustees to being in acting; thus limiting the powers of its trustees who are charged with the running of the activities of the trust which includes managing various projects of the trust and property of the trust in turn interfere with the operations of the applicant to its detriment.
  17. The applicant submitted that the application was brought without unreasonable delay as the orders sought to be stayed were issued on 30/11/2023 and the application herein was filed on 11/4/2024.
  18. The applicant also indicated that they are willing to provide security and will submit to the conditions that are set by the court.
  19. The respondent alternatively submitted that the orders that were issued were meant to maintain status quo so that the parties do not transfer the properties held under the trust, not to interfere with each other's occupation of the said properties and also not to change the current trustees of the applicant until the dispute between them is heard and determined.
  20. The respondent submitted that the applicant has not laid a satisfactory basis to have the court exercise its discretion and grant an extension to appeal out of time. The respondent argued that the application is grounded on falsehoods and they stand to be prejudiced. Therefore the application should be dismissed with costs to allow the suit filed at the Chief Magistrates Court to proceed for hearing to its logical conclusion.
  21. The issues for determination in this ruling are as follows;
    - i. Whether the applicant should be granted leave to appeal out of time.
    - ii. Whether the applicant should be granted stay of execution pending appeal.
  22. The law governing granting leave to appeal out of time is Section 79G which states as follows;

Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order:

Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.
  23. The court has a discretion to grant leave to file the appeal out of time.
  24. I find that there is a plausible explanation why the appeal was not filed on time.
  25. Leave to file appeal out of time is accordingly granted.



26. The conditions for stay pending appeal are stated in Order 42 Rule 6 s follows;
- (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except appeal case of in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
  - (2) No order for stay of execution shall be made under sub rule (1) unless— (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
  - (b) Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.
27. This is a none monetary decree and I find that the trial court issued a temporary injunction barring the parties from undertaking any transfer.
28. I direct that the status quo be maintained pending the hearing and determination of the appeal.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 31<sup>ST</sup> DAY OF OCTOBER, 2024.**

.....  
**A. N. ONGERI**  
**JUDGE**

**In the presence of:**  
.....for the Applicant  
.....for the Respondent

