



**Gichuhi & another v Muiruri & 2 others (Environment and Land Miscellaneous Application E057 of 2022) [2023] KEELC 16774 (KLR) (16 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16774 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E057 OF 2022  
BM EBOSO, J  
MARCH 16, 2023**

**BETWEEN**

**JOSEPH MWANGI GICHUHI ..... 1<sup>ST</sup> APPLICANT**

**RUTH NDUGUTI GICHUHI ..... 2<sup>ND</sup> APPLICANT**

**AND**

**MICHAEL MUYA MUIRURI ..... 1<sup>ST</sup> RESPONDENT**

**MARY WAMBUI NJOROGE ..... 2<sup>ND</sup> RESPONDENT**

**PETER KIIRU NJAU ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. What falls for determination in this ruling is the notice of motion dated 31/8/2022, filed on 31/8/2022 by Joseph Mwangi Gichuhi and Ruth Nduguti Gichuhi. The two are son and mother. Through the motion, they seek the following verbatim reliefs:
  1. Spent
  2. That this honourable court be pleased to grant leave to the applicants to lodge an appeal out of time against the Judgment of the Hon F Nyakundi – SRM delivered on August 28, 2007 in Thika Chief Magistrate court DO Case No 21 of 2007.
  3. That the draft memorandum of appeal be deemed to have been duly filed upon payment of the requisite fees.
  4. That the costs this application be provided for.
2. The application was supported by an affidavit sworn on 31/8/2022 by Joseph Mwangi Gichuhi. It was canvassed through written submissions dated December 13, 2022, filed by M/s Kanja & Njoroge Advocates.



3. The case of the applicants is that the Chief Magistrate Court at Thika rendered “a Judgment” on 28/8/2007 in Thika CMC D O Case No 21 of 2001.” They are aggrieved with the said “Judgment”. They wish to lodge an appeal against the said “Judgment”. They contend that the delay in lodging an appeal was not intentional, adding that they were not present when “the award was confirmed on the August 28, 2007”. It is their case that they were not aware of the subsequent proceedings that took place in the Chief Magistrate Court between 14/2/2011 and 12/9/2019.
4. The applicants further contend that as a consequence of the said “judgment”, the suit property, Kiganjo/Gaitei/480, was subdivided into four parcels, Kiganjo/Gatei/2709; 2710; 2711 and 2712.
5. In their written submissions dated December 13, 2022, counsel for the applicants identified the following as the two issues that fell for determination in the application: (i) Whether there was inordinate or undue delay on part of the applicants; and (ii) Whether the orders sought in the application should be granted.
6. Counsel for the applicants submitted that an appeal should have been filed in the Provincial Land Disputes Appeals Committee “within 60 days of the Judgment.” Counsel argued that with the promulgation of the *Constitution of Kenya 2010*, various laws, including the *Land Disputes Tribunals Act* were repealed. Counsel contended that the new *Constitution* provided for the creation of the Environment & Land Court to adjudicate land disputes. Counsel argued that the repeal of the *Land Disputes Tribunals Act* did not extinguish the applicant’s right of appeal.
7. Counsel for the applicants added that it was clear from the proceedings of the Magistrate Court that the respondents moved the Magistrate Court severally in the absence of the applicants. Counsel pointed out that in 2019, the respondents moved the Magistrate Court for an order of subdivision of the land and the application was granted on 6/12/2021. Counsel contended that the order issued by the Magistrate Court on 6/12/2021 was irregular because it contravened Section 7 of the *Limitation of Actions Act*.
8. On whether the orders sought in the application should be granted, counsel cited the decision in *Dakawan Transporters Limited v National Land Commission & 3 others* [2021] eKLR and submitted that the applicants had tendered satisfactory reasons for the delay in bringing the appeal. Counsel contended that the application should be granted in the interest of justice, “to accord the applicants a seat at the table of justice instead of condemning them unheard.”
9. The respondents opposed the application through a replying affidavit sworn on 27/10/2022 by Michael Muya Muiruri and written submissions dated 27/1/2023, filed by M/s Wambui Ngugi & Co Advocates. Their case is that they filed a claim at the Thika Land Disputes Tribunal in 2006 against the applicants. The claim was heard by the Tribunal and an award was rendered on 3/4/2007. The award of the Tribunal was subsequently filed at the Thika Chief Magistrate Court and read on 24/7/2007. The award was subsequently confirmed as a Judgment of the court on 28/8/2007.
10. The respondents further contend that the applicants had 60 days within which to file an appeal to the Provincial Land Disputes Appeals Committee but they elected not to pursue the appeal mechanism for 15 years. It is the case of the respondents that the application for leave to file an appeal out of time is an abuse of the process of the court. They add that on 24/11/2008, the 2nd applicant was in court and informed the court that she was aware that her children had sold land to the respondents and she was ready to sign transfer documents.
11. The respondents add that on 15/1/2006, the 2nd applicant applied for and obtained consent from the land control board to subdivide and transfer part of the suit property to the respondents. They further



contend that the applicants have failed to tender a satisfactory explanation as to why they did not lodge an appeal for 15 years. They urge the court to dismiss the application.

12. In their written submissions dated 27/1/2023, counsel for the respondents cited Section 30 of the [Environment and Land Court Act](#) and submitted that even after the repeal of the [Land Disputes Tribunals Act](#), the tribunals still had jurisdiction to hear and dispose appeals pending the operationalization of the Environment and Land Court. Counsel added that the fact that no appeal was filed was in itself an indication that there was no intention on the part of the applicants to appeal against the award of the Tribunal. Counsel added that there had been inordinate and unnecessary delay that had not been explained.
13. Counsel for the respondents further submitted that it had always been within the knowledge of the applicants that parcel number 480 was sold to the respondents and that the award of the tribunal had been adopted as a judgment of the court, adding that the 2nd applicant was in court on November 24, 2008 and informed the court that she was ready to sign the transfer documents. Counsel urged the court to reject the application.
14. The court has considered the application, the response to the application, and the parties' rival submissions. The court has also considered the relevant legal frameworks and the prevailing jurisprudence on the key issue that falls for determination in the application. Although the applicants framed their substantive relief as a plea for leave to file an appeal out of time, it is in essence an application for extension of time. Consequently, the single issue that falls for determination in this application is whether the applicants have satisfied the criteria upon which our courts exercise jurisdiction to extend time.
15. First, jurisdiction to extend a limitation period that is prescribed by statute is donated by the prescribing statute or any other statute. Second, the jurisdiction is exercised on well settled principles. The Supreme Court of Kenya outlined the following applicable principles in [Nicholas Kiptoo Arap Korir v IEBC and 7 others](#) Application No 15 of 2014 [2014]eKLR:
  - i. 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;
  - ii. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court
  - iii. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
  - iv. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
  - v. Whether there will be any prejudice suffered by the respondents if the extension is granted;
  - vi. Whether the application has been brought without undue delay; and
  - vii. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.
16. In the application under consideration, the applicants urged the court to grant them leave to lodge an appeal out of time against the Judgment of Honourable F Nyakundi delivered on 28/8/2007 in Thika CMC DO Case No 21 of 2007. The impugned decision was an order of the Magistrate Court issued under Section 7 (2) of the repealed [Land Disputes Tribunals Act](#). It was an order entering judgment in favour of the respondents in accordance with the decision of the Thika Land Disputes Tribunal.



17. For avoidance of doubt, Section 7 of the repealed Act provided as follows:
  - "1. The Chairman of the Tribunal shall cause the decision of the Tribunal to be filed in the Magistrate's court together with any depositions or documents which have been taken or proved before the Tribunal.
  2. The court shall enter judgement in accordance with the decision of the Tribunal and upon judgement being entered a decree shall issue and shall be enforceable in the manner provided for under the Civil Procedure Act."
18. I have carefully examined the entire framework in the repealed Act. The Act had an elaborate framework on appeal mechanisms. Under Section 8 of the repealed Act, a party aggrieved by the decision of the Tribunal had 30 days within which to lodge an appeal to the Appeals Committee constituted for each of the Provinces (hereinafter referred as the "Provincial Appeals Committee)." A party aggrieved with the decision of the Provincial Appeals Committee had the right of appeal to the High Court on points of law within 60 days from the date of the decision of the Provincial Appeals Committee. The decision of the Provincial Appeals Committee was final on issues of fact.
19. Upon the repeal of the *Land Disputes Tribunals Act* by the *Environment and Land Court Act* in 2011 the appellate jurisdiction that was hitherto exercised by the Provincial Appeals Committees was vested in the Environment and Land Court.
20. From the materials presented to the court, it is clear that the applicants participated in the proceedings of the Tribunal. The Tribunal rendered its award on 3/4/2007. The applicants elected not to pursue the appeal mechanism provided under Section 8 of the repealed Act. Similarly, they elected not to pursue the judicial review mechanism that was available to them under the law.
21. It is also clear from the evidence presented to the court that the applicants participated in the adoption proceedings that were conducted by the Magistrate Court under Section 7 of the repealed Act. They were aware of the adoption order. Indeed, the record of the Chief Magistrate Court shows that Joseph Mwangi was present on 19/6/2007. It also shows that the two applicants were in the Magistrate Court on November 24, 2008. On that particular day, the 2nd applicant, Ruth Nduguti Gichuhi, informed the Magistrate Court that she was aware that her children had sold land to the respondents and that she was ready to sign the transfer documents.
22. The applicants elected not to challenge the award of the Tribunal and the order of the Magistrate Court adopting the award of the Tribunal as a Judgment of the Court. For 15 years, the applicants did nothing to challenge the award of the Tribunal and the Judgment of the Magistrate Court. They now want this court to resurrect a dispute that was finalized in 2007.
23. Have the applicants satisfied the criteria for extension of limitation period? My answer to this question is in the negative. The applicants were aware of the award and did nothing about it. They were aware of the adoption order but did nothing about it for 15 years. Their contention that the award was adopted in their absence cannot be taken as a satisfactory explanation because they were aware of the adoption session and they have been aware of the adoption order all along.
24. It is not lost to this court that in the present application, the applicants have not expressed their intention to challenge the award of the Tribunal. What they propose to challenge is the adoption order of the Magistrate Court. It is not clear how they hope to impeach an order issued by a Magistrate Court under Section 7(2) of the repealed Act through an appeal to this court. The appeal mechanism that was available to the applicants was an appeal to the Appeals Committee against the Award of the Tribunal



under Section 8(1) of the Repealed Act and a second appeal to the superior court under Section 8(9) of the repealed Act. The above appeal mechanisms were squandered by the applicants sixteen years ago.

25. It is therefore clear to this court that to reopen a dispute that was finalized in 2007 would be to unfairly vex the respondents. This court will not do that. The result is that the applicants have failed to satisfy the criteria upon which our courts exercise jurisdiction to extend limitation period.
26. Consequently, the application dated 31/8/2022 is dismissed for lack of merit.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 16TH DAY OF MARCH 2023**

**B M EBOSO**

**JUDGE**

In the Presence of: -

Mr. Njoroge for the Applicants

Ms. Wambui for the Respondents

Court Assistant: Ms Osodo

