



Njogu v Machua & 2 others (Miscellaneous Civil Application E424 of 2022) [2023] KEHC 17736 (KLR) (Civ) (25 May 2023) (Ruling)

Neutral citation: [2023] KEHC 17736 (KLR)

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

CIVIL

MISCELLANEOUS CIVIL APPLICATION E424 OF 2022

JN MULWA, J

MAY 25, 2023

BETWEEN

GRACE WANJIRU NJOGU APPLICANT

AND

ELLEN WAMBUA MACHUA & 2 OTHERS RESPONDENT

RULING

1. Before the court is an application dated 24/06/2022 brought by Grace Wanjiru Njogu the applicant under Provisions of Order 50 Rule 6 of the *Civil Procedure Rules* and Section 1A 1B and 3A, 7 9G and 95 of the *Civil Procedure Act*.

The orders the applicant seeks are two;

1. (Leave to appeal out of time against the ruling and orders of the trial court in Milimani CMCC no. 649 of 2016
2. An order of stay of proceedings in the said trial court case CMCC No. 649 of 2016
2. The Applicant swore the Supporting Affidavit on the 24/06/2022, and grounds are stated thereon.
3. A careful consideration of the ground for the application are clear that upon delivery of the impugned ruling on the 12/4/2022, the applicant requested the court for a typed copy of the ruling, and further followed with a letter dated 14/04/2022 and duly paid for it. The ruling was not furnished to the applicant in good time to facilitate filing of the appeal within the prescribed period under Section 79G of the *Civil Procedure Act* as it was furnished on the 15/06/2022, two months after the ruling.
4. In opposing the application, the 1st Respondent swore the replying affidavit on the 12/10/2022, stating that at time of delivery of the ruling, both parties advocates were present in court; that despite that the



application is dated 24/06/2022, it was served upon the respondent's advocates on the 22/08/2022 for no explainable reasons in the delay of about two months.

5. More importantly, the respondent raises a matter of jurisdiction as stated under Section 26 of the [Environment and Land Court Act](#).
6. I have considered the trial court's ruling annexed as an exhibit "GWN2" in the applicant's affidavit.
Jurisdiction of a court is so important that when a court finds itself without the requisite jurisdiction to deal with a matter before it, it must down its tools, because whatever a court does without jurisdiction, boils to nothing, is void and a nullity – Owners of the motor vessel "Lilian S" V. Caltex Oil (Kenya) Ltd 1989.
7. In the impugned ruling, the trial court was dealing with an application by the Respondents. dated 11/02/2022 seeking transfer of the suit before it to a court of competent jurisdiction namely the Environment and Land Court, pursuant to Section 13 and 26(3) of the Environment and Land Act, and Article 162(12) (b) of [the Constitution](#), the main complaint being that the learned Magistrate did not have jurisdiction to preside over the case.
8. I have considered the wording of Section 26 of the Environment and Land Act. It provides-
 - 3) The Chief magistrate may, by notice in the Gazette, appoint certain magistrates to preside over any cases involving environment and land matters of any area of the country.
9. It has not been alleged that the trial court Hon. Kagoni, PM, had not been appointed and Gazetted to hear and handle environmental and land matters at Milimani Chief Magistrates courts station in terms of Section 3 and 4 of the said Act; nor was it the case that the said Magistrate did not have the pecuniary jurisdiction to hear the case.
10. Having read and interrogated the supporting affidavit and grounds for the application as stated, it is clear to me that the subject of the trial court case was one involving a dispute concerning land and environment to which the learned Magistrate had the necessary jurisdiction, pursuant to Section 3 and 4 of the [Environment and Land Court Act](#).
11. The above goes to this court's determination as to whether Prayer no. 2, an order for stay of proceedings before the said Learned Magistrate should be granted. Having rendered myself sufficiently on the issue, I find no plausible reasons to persuade this court to stay the proceedings before the said Magistrate in CMCC No. 649 of 2016. That prayer is devoid of merit and falls for dismissal.
12. As to the 1st prayer, leave to appeal out of time, I find no inordinate delay as to deny the applicant such leave. I am satisfied with the explanation offered.
13. Consequently, leave is hereby granted to the applicant to file an appeal out of time against the ruling delivered on the 12/04/2022.
The memorandum of appeal shall be filed and served within 7 days of this ruling; and the Record of Appeal within 60 days thereafter.
14. As rendered at paragraph 11 above, the said suit shall proceed before the Hon. Edgar Kagoni, PM expeditiously, unless he is no longer at the Milimani Law Courts.
The application having succeeded partially, each party shall bear own costs.
Orders accordingly.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 25TH DAY OF MAY, 2023.



JANET MULWA
JUDGE

