



Kulale (Suing as the Personal Representative of the Estate of Nderi Kamau Mahinda -Deceased) & another v Lekasi & 2 others (Environment and Land Miscellaneous Application E035 of 2022) [2023] KEELC 16930 (KLR) (19 April 2023) (Ruling)

Neutral citation: [2023] KEELC 16930 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E035 OF 2022
MN GICHERU, J
APRIL 19, 2023

BETWEEN

**REPRESENTATIVE OF THE ESTATE OF NDERI KAMAU MAHINDA
(DECEASED) 1ST APPLICANT**

**CHARLES MARIO KULALE (SUING AS THE PERSONAL
REPRESENTATIVE OF THE ESTATE OF NDERI KAMAU MAHINDA -
DECEASED) 2ND APPLICANT**

AND

SIMON KINYUA OLE LEKASI 1ST DEFENDANT

LAND REGISTRAR, KAJIADO COUNTY 2ND DEFENDANT

ATTORNEY GENERAL 3RD DEFENDANT

RULING

1. This Ruling is on the Notice of Motion dated 14/9/2022. The Motion which is under articles 25,50 and 159(2)(d) of the *Constitution of Kenya* 2010, Order 42 Rule 6 of the *Civil Procedure Rules* and sections 1A,1B,3A,79G and 95 of the *Civil Procedure Act* and all enabling provisions of the law seeks for the following orders.
2. The court be pleased to extend time for lodging an appeal against the decision of the Land Registrar Kajiado, delivered on 12/10/2020 and the Applicant be granted leave to file a memorandum of appeal out of time.
4. The court be pleased to stay implementation of the Land Registrar's decision delivered on 12/10/2020 pending the hearing and determination of the intended appeal.



5. The court be pleased to grant further orders and or directions as it deems fit and expedient in the circumstances.
6. Costs of this Application be provided for.
2. The Motion is supported by sixteen grounds, an affidavit by Charles Mario Kulale and five annexures. The gist of the above material is as follows. The applicant is the registered owner of L.R. Kajiado/Dalalekutuk/1033 or he represents the registered owner. The said parcel borders other parcels such as 46, 1032 and 1033. The boundaries between the said parcels has been the subject of a longstanding dispute.
3. On 22/9/2020, the District Land Registrar visited the disputed parcels with a view to determining the boundaries in dispute. He carried out the exercise as scheduled and then on 12/10/2020 delivered a ruling in favor of Simon Kinyua Ole Lekasi.
4. It is the Applicant's case that he was never made aware of the ruling dated 12/10/2020 until December 10, 2021 after his advocate on record requested for it. He was also not aware of his right of appeal against the decision of the Land Registrar. He is aggrieved by this decision and he is desirous of appealing against it. He stands to suffer substantial loss if the decision is implemented. His intended appeal will also be rendered nugatory. He prays that the court should not shut the door of justice on him but it should instead exercise its unfettered discretion in his favour.
5. The Motion is opposed by the first respondent who has sworn a replying affidavit dated 13/10/2022 in which he deposes as follows.
6. Firstly, on 2/12/2020, the respondent was present at the implementation of the ruling delivered on 12/10/2020. Also present were the applicant, other respondents, area chief, District Surveyor's and neighbors.
7. Secondly, in the ruling dated 10/12/2020, the Land Registrar stated that the applicant who was then a respondent resisted to be part of the process whereby the first Respondent was advised by the Land Registrar to seek court orders to implement the Land Registrar's decision.
8. Thirdly, the respondent tried to settle the matter through ADR but this did not succeed it is then that he wrote to the applicant a demand letter.
9. Fourthly, it is only after the applicant was served with the Notice of Motion in ELC Misc Application No. E014 of 2020 on 29/7/2022 that he filed the current Application.
10. Fifthly, the applicant has not explained why it took him close to three years from the date of ruling and ten months since the ruling was served upon them to file the current Application. For the above and other reasons, he prays that the Application be dismissed with costs.
11. Counsel for the parties filed written submission on 17/11/2022 and 18/1/2023 respectively. They identified the following issues for determination.
 - i. Whether the court should exercise its discretion and extend the time within which to appeal against the decision of the Land Registrar?
 - ii. Whether the court should grant a stay of execution of the Land Registrar's ruling pending the hearing and determination of the intended appeal?
 - iii. Whether the Land Registrar's decision should be implemented?



12. I have carefully considered the Notice of Motion dated 14/9/2022 in its entirety including the affidavits, the annexures, the written submissions and the law cited herein. I make the following findings on the three issues raised above.
13. On the first issue, I find that the court should not extend the time within which to appeal against the decision of the Land Registrar. There two reasons for this. Firstly, the applicant has not been convincing that he was not aware of the ruling of the Land Registrar delivered on 12/10/2020 in good time. This is because he was present at the implementation exercise on 2/12/2020 and even resisted its implementation. There is sufficient evidence of this from the ruling of the Land Registrar dated 10/12/2020. At page 2 paragraph 2 of the said ruling, the Land Registrar stated this,

“...there was objection on the implementation from the part of the Respondents on grounds that they were not agreeable to the ruling delivered ”

This is clear proof that the Applicant knew of the ruling as early as 2/12/2020

Secondly, there is inordinate delay on the part of the Applicant on filing the current Application and I believe that it was filed in reaction to Misc. Application No. E014 of 2022. The delay of over twenty months has not been explained.

14. As regards the second issue, I find that a stay of execution should not be granted because of the same reason of inordinate delay. Under Order 42 rule 6(2) (a) of the Civil Procedure Rules, no order for stay of execution shall be made unless the court is satisfied that the Application has been made without unreasonable delay. In this case, the delay is not only obvious but also inordinate and unexplained.
15. On the third issue, I find that the Land Registrar’s decision should be implemented because nothing lawful stands on its way. The decision of the Land Registrar is both procedural and lawful and must be implemented to the letter.

For the above reasons, I dismiss the notice of motion dated 14/9/2022 with costs to the Respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 19TH DAY OF APRIL, 2023.

M.N. GICHERU

JUDGE

