



**Mburu v Gakuya & 2 others; Nawel Business Agencies & 3 others (Interested Parties)
(Miscellaneous Application 11 of 2023) [2023] KEELC 16834 (KLR) (12 April 2023) (Ruling)**

Neutral citation: [2023] KEELC 16834 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
MISCELLANEOUS APPLICATION 11 OF 2023**

**BM EBOSO, J
APRIL 12, 2023**

BETWEEN

FAITH NYAMBURA MBURU APPLICANT

AND

HENRY WAWERU GAKUYA 1ST RESPONDENT

IRENE NYAMBURA GAKUYA 2ND RESPONDENT

LEBERATA NJERI 3RD RESPONDENT

AND

NAWEL BUSINESS AGENCIES INTERESTED PARTY

NAWEL ENTERPRISES INTERESTED PARTY

NAWEL AGENCIES INTERESTED PARTY

JOHN NDUNG’U NGIGE INTERESTED PARTY

*(Arising from the Judgment rendered by Hon C K Kisiangani on
December 8, 2022 in Ruiru MCOMMSU Case No E002 of 2021)*

RULING

1. Falling for determination in this ruling is the notice of motion dated February 9, 2023, brought by Faith Nyambura Mburu [the applicant]. Through the motion, the applicant seeks an order enlarging the time within which to lodge an appeal against the Judgment rendered by Hon C K Kisiangani on December 8, 2022 in Ruiru MCOMMSU Case No E002 of 2021. The application is premised on the grounds outlined in the motion and in the applicant’s supporting affidavit sworn on February 9, 2023 and her further affidavit filed on March 10, 2023 but expressed as sworn on “February 10, 2023”.



It was canvassed through written submissions dated March 10, 2023, filed by M/s Wamiti Njagi & Associates.

2. The case of the applicant is that she was not able to lodge an appeal within the prescribed time because her sister-in-law, Jerusha Njeri, who is now deceased, had been diagnosed with cervical cancer and had been hospitalized at Kenyatta University Teaching, Research and Referral Hospital. She adds that her said sister-in-law subsequently died on January 17, 2023 and was buried on January 27, 2023. She contends that she was involved in taking care of the deceased during hospitalization and taking care of the deceased's children. She adds that she was "fully engrossed in the burial preparations" of the deceased. Lastly, she contends that the hospitalization and subsequent demise of the deceased took a toll on her.
3. The application is opposed by the 1st and 2nd respondents through a replying affidavit sworn on March 1, 2023 by Irene Nyambura Gakura and written submissions dated March 14, 2023, filed by M/s Bonaventure & Associates Advocates. Their case is that the alleged sister-in-law is, in any event, a distant relative. They add that there is no proper basis upon which this court can exercise its discretionary power to enlarge time. They urge the court to reject the application.
4. The 3rd respondent opposes the application through her replying affidavit sworn on February 24, 2023. Her case is that the limitation period for lodging an appeal lapsed on January 8, 2023, long before the applicant was bereaved and therefore death of the deceased cannot be a proper explanation for the applicant's failure to exercise her right of appeal within the prescribed time. She adds that the application is a "dilatory tactic" by the applicant.
5. I have considered the application, the responses to the application and the parties' respective submissions. I have also considered the relevant legal frameworks and jurisprudence. The single question to be determined in the application is whether the applicant has satisfied the criteria upon which jurisdiction to enlarge time for initiating an appeal is exercised.
6. The relevant criteria was outlined by the Supreme Court of Kenya in *Nicholas Kiptoo Arap Korir Salat v The Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR as follows:
 - “ 1. 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;
 2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
 3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
 4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
 5. Whether there will be any prejudice suffered by the respondents if the extension is granted;
 6. Whether the application has been brought without undue delay; and
 7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”



7. The impugned judgment was rendered on December 8, 2022. Consequently, by dint of the provisions of section 79 G of the Civil Procedure Act and order 50 rule 4 of the Civil Procedure Rules, limitation period lapsed in January 2023.
8. The explanation advanced by the applicant is that her sister-in-law was, at all material times, admitted at KUTRRH where she was diagnosed with cervical cancer and she subsequently succumbed to the disease. She contends that she was involved in taking care of the deceased's children and in making preparations for the deceased's burial. She did not, however, exhibit any documentary evidence relating to the deceased's hospitalization. She did not exhibit any documentary evidence relating to her kinship with the deceased.
9. The impugned Judgment was a culmination of a claim for refund of a sum of Kshs 1,150,000 which the applicant received from the 1st and 2nd respondents as purchase price for a plot that was described by the applicant as Number 21B. It was contended that the applicant was not able to convey the land to the 1st and 2nd respondents. It was also contended that the applicant was not able to survey and grant vacant possession of the land to the two purchasers. It was further contended during trial that whereas the plot which the applicant purported to sell to the 1st and 2nd respondents was described by the applicant as Plot Number 21B, on the ground it was Plot Number 31B belonging to one John Ndungu Ngige.
10. Taking the foregoing into account, the court will conditionally enlarge the time within which the applicant will be at liberty to exercise her right of appeal. The condition is that the applicant will deposit in court the sum of Kshs 1,150,000 which she admitted as having received from the 1st and 2nd respondents as purchase price.
11. In the end, the applicant's notice of motion dated February 9, 2023 is disposed as follows:
 - a. The time for lodging an appeal by Faith Nyambura Mburu against the Judgment rendered on December 8, 2022 in Ruiru MCOMMSU Case No E002 of 2021 is enlarged by thirty (30) days from today on condition that the said Faith Nyambura Mburu shall deposit in this court the sum of Kshs 1,150,000 prior to lodging the said appeal.
 - b. In the event of non-compliance, the order enlarging time shall stand vacated and shall stand substituted with an order dismissing the application dated February 9, 2023.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 12TH DAY OF APRIL, 2023

B M EBOSO

JUDGE

In the Presence of: -

Mr Njiru for the Applicant

Mr Otieno for the 1st Respondent

Court Assistant: Hinga

