



**Fast Lane Developers Limited v Njuguna (Environment and Land Appeal
54 of 2021) [2023] KEELC 17720 (KLR) (23 May 2023) (Judgment)**

Neutral citation: [2023] KEELC 17720 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND APPEAL 54 OF 2021**

JG KEMEI, J

MAY 23, 2023

BETWEEN

FAST LANE DEVELOPERS LIMITED APPELLANT

AND

PETER GITAU NJUGUNA RESPONDENT

*(Being an appeal to this Honourable Court from the Ruling of the SRM at Ruiru
(Hon CA Otieno Omondi) delivered on the 29/4/2020 in MCLE No 46 of 2019.)*

JUDGMENT

1. Dissatisfied with the trial Court's Ruling in Ruiru MCL&E Case No 46 of 2019 delivered on 29/4/2020 (sic), the defendant now Appellant instituted this appeal vide a Memorandum of Appeal dated 23/6/2021 on the following grounds of appeal That; -
 - a. That the Learned Magistrate erred in law and in fact by finding that the agreement for sale dated 20th November 2008 between the Plaintiff and the Defendant in respect of land title number Ruiru East Block 1/6330 is valid and enforceable.
 - b. That the Learned Magistrate erred in law and fact in ordering the specific performance of the agreement entered into by the parties in respect of land title number Ruiru East Block 1/6330.
 - c. The Learned Magistrate erred in law and fact in ordering the Appellant to execute transfer documents in respect of land title Ruiru East Block 1/6330.
 - d. The Learned Magistrate erred in fact in finding that the Appellant allowed the Respondent to take possession of land title Ruiru East Block 1/6330 on the basis of bare oral statement of the Respondent despite a sworn denial by the Appellant.



- e. The Learned Magistrate erred in law in finding that *Limitation of Actions Act* could not apply in the circumstances and facts of this case.
 - f. The Learned Magistrate erred in law and fact in issuing a permanent injunction against the Appellant or its agents from evicting the Respondent from land title Ruiru East Block 1/6330 which was not deserved in the circumstances of the case.
 - g. The Learned Magistrate erred in law in issuing a permanent injunction against the Appellant or its agents from disposing off, alienating or charging land title Ruiru East Block 1/6330.
 - h. The Learned Magistrate erred in law in awarding costs of the suit to the Appellant when he did not deserved them.
 - i. The Learned Magistrate erred in law and in fact in dismissing the counterclaim with costs against the preponderance of evidence by the Appellant.
 - j. The Learned Magistrate failed to adequately consider the law and facts of this case.
2. The Appellant urges this Court to allow his appeal; set aside the trial Court Judgment and allow his counter claim with costs.

The Written Submissions

3. On the 13/2/2023 the parties elected to canvass the appeal by way of written submissions. The Appellant through the firm of D. Njogu & Co. Advocates filed submissions dated 23/3/2023 while Respondent did not file any submissions. The appeal is therefore uncontested.

Analysis And Determination

4. Before delving into the merits of the appeal, I note that the issue of the competency or otherwise of the appeal needs to be addressed first. There is an amended Record of Appeal filed herein on 19/7/2022 pursuant to leave granted by this Court on 9/6/2022.
5. Pages 4 - 5 of the amended Record of Appeal contain the Memorandum of Appeal dated 23/6/2021 initially filed on 25/6/2021 by the Appellant through the firm of D. Njogu & Co. Advocates. The Memorandum of Appeal alludes to an appeal against a Ruling of the trial Court delivered on 29/4/2020. However as already indicated the Appellant prays that the trial Court Judgment, whose date of delivery is not disclosed, against him be set aside. It is not clear if the impugned Judgment is the one delivered on 16/1/2020 and found at pages 185 – 198 of the Record of Appeal.
6. If the Court takes that the impugned Judgement is the one dated the 16/1/2020, then it is noted that the Memorandum of Appeal was filed one year and five months later contrary to the provisions of Section 79G of the *Civil Procedure Act* which states;

“79G. Time for filing appeals from subordinate Courts

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.”



7. The provision is couched in mandatory language with latitude for a party to seek leave to file an appeal out of time upon satisfying the Court the reason(s) for not filing within 30 days. In the instant case, there is no evidence that the Appellant sought and obtained leave to file its appeal out of time in line with the above proviso.
8. I am guided by the Court of Appeal decision in *Mistry Premji Ganji (Investments) Limited Vs Kenya National Highways Authority* [2019] eKLR where the Court allowed an Application to strike out the appeal for being filed out of time and without leave of Court held as follows;

“ ... Indeed, a Record of Appeal founded on a defective Notice of Appeal cannot stand. This is because, an appeal is instituted by the Notice of Appeal and once the same is found to be fatally defective (as is the case herein) the fate of the Record of Appeal is equally sealed. Furthermore, had the Notice of Appeal been valid, the fate of the Record of Appeal would still face challenges since it was filed out of time...”
9. That said there is a more fundamental issue that I must discuss here. I have read the amended Record of Appeal dated the 15/7/2022 and filed on 19/7/2022 which at the preamble states as follows-

“ Being an appeal to this Hon Court from the Ruling of the SRM at Ruiru (Hon C.A Otieno Omondi) delivered on the 29/4/2020 in MCLEC NO 46 of 2019).”
10. The supplementary Record of Appeal dated the 12/9/2022 and filed on the 15/9/2022 states that it is against the Ruling of the above decision.
11. The Memorandum of Appeal as captured in the amended Record of Appeal states in its opening statement as follows;

“ The Appellant herein being dissatisfied with the Judgement of the Hon Court from the Ruling of the SRM at Ruiru (Hon CA Omondi) delivered on the 29/4/2020 in MCLE 46 of 2019) appeals against the said Judgement on the following grounds”
12. The Appellant sought prayers in interalia that the Judgement of the lower Court against the Appellant be set aside. The date of the Judgement is not disclosed.
13. However, despite diligent perusal of the file I am unable to find a Ruling delivered on the 29/4/2020. What is on record are the Rulings of the Court delivered on the 30/7/2019 and 15/10/2019. As stated earlier there is a Judgment of the trial Court delivered on the 16/1/2020 in the amended Record of Appeal.
14. I find that there is total disharmony between the Record of Appeal, the Memorandum of Appeal and what the Appellant is appealing against. Is it an appeal against the Rulings or the Judgement of the Court? A scenario like this makes it extremely difficult for the Court to decipher the intentions of the Appellant as to what he is aggrieved with.
15. The Court cannot redraft the appeal for the Appellant. I find that the appeal before me is incompetent and in my view the interest of justice shall be served if the same is struck out to enable the Appellant, if so desired, to place a proper appeal before the Court.
16. I make no orders as to costs.



17. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 23RD DAY OF MAY, 2023
VIA MICROSOFT TEAMS.**

J G KEMEI

JUDGE

Delivered online in the presence of;

Appellant – Absent

Ms. Kangethe for Respondent

Court Assistants – Kevin & Lilian

