



REPUBLIC OF KENYA



**KENYA LAW**  
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**Cheruiyot v Ruto (Miscellaneous Application 17 of 2022)  
[2022] KEHC 3169 (KLR) (28 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 3169 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BOMET  
MISCELLANEOUS APPLICATION 17 OF 2022**

**RL KORIR, J**

**JUNE 28, 2022**

**BETWEEN**

**WILLIAM KIPROTICH CHERUIYOT ..... APPLICANT**

**AND**

**JOHN KIPNG'ETICH RUTO ..... RESPONDENT**

**RULING**

1. This Application has come to me through a Notice of Motion under Certificate of Urgency dated March 17, 2022 and filed March 21, 2022. It is supported by the sworn affidavit of William Cheruiyot, the Applicant herein. It seeks the following prayers:-
  - 1) Spent
  - 2) That the Applicant herein be granted leave to file an appeal of the judgment entered in favour of the Respondent on October 27, 2021 in Civil Suit No. 56 of 2018 at Bomet out of time.
  - 3) That the Defendant/Applicant herein be granted an opportunity to submit both oral and written arguments in this Application.
  - 4) That the Court be pleased to make such orders it deems fit and just.
  - 5) That the costs of the Application be provided for.
2. The Application is premised on grounds reproduced verbatim as follows:-
  - 1) That the Application herein is of utmost urgency and merits to be placed before the duty magistrate/judge on a priority basis.
  - 2) That the Respondent commenced Civil Suit No. 56 of 2018 against the Defendant wherein judgment was entered in favour of the Respondent on October 27, 2021



- 3) That the Respondent proceeded to extract the decree dated November 22, 2021 and is intent on commencing execution.
  - 4) That the Applicant intends to appeal the judgments of this honorable court having been dissatisfied by it.
  - 5) That the Applicant promptly filed a Notice of Appeal on November 12, 2021 and made payments towards typing of proceedings and judgment to enable him file the Appeal.
  - 6) That the Applicant's Notice of Appeal was well within the 30 days period stipulated by the law to file an appeal and demonstrated that he intended to file an appeal having been dissatisfied with the lower court judgment.
  - 7) That the Respondent already instructed auctioneers who are keen on executing the judgment against the Applicant.
  - 8) That the Applicant has always demonstrated that he intends to appeal the judgment as such this honorable court should not be inclined to entertain a procedural technicality of failure to file the substantive memorandum of appeal within the required time period.
  - 9) That The Applicant's predicaments have been complicated following the denial of stay orders by the lower court vide ruling dated 1 February 6, 2022.
  - 10) That the Defendant/Applicant stands to suffer irreparable loss which cannot be compensated by way of damages if the orders sought herein are not granted.
3. On April 25, 2022, the Respondent filed a Replying Affidavit dated April 21, 2022. He averred that the Application was intended to deny him justice and that the Applicant did not provide any plausible reasons for not regularizing the appellate process in nearly 6 months since the date of judgment. That the Applicant only paid for the invoice for typed proceedings on November 12, 2021 despite it being issued on 6<sup>th</sup> November 2021, which was a clear demonstration that he was not keen on pursuing the appeal within the stipulated time period. That he also never procured a certificate of delay from the court when it became apparent that there would be delays from the registry and therefore, there is no good and sufficient reason why he had not filed the appeal within time. It was his averment that the Applicant did not demonstrate due diligence in observance of the timelines for filing and since the matter has been in court for four years, he stood to suffer great prejudice if the Application was allowed.
  4. The Application was urged through oral submissions made in Court on April 28, 2022.
  5. The Respondent in this case appeared in person. The Court therefore directed the parties to make oral submissions. The Applicant's submissions centered around the principles upon which the court should consider the Application. The Respondent simply submitted that he did not understand why the case was being prolonged after he had succeeded in the lower court.
  6. This Court reserved the Ruling on the Application. Upon perusal of the pleadings however, this Court found that the matter sought to be appealed was one relating to a contract of sale of land entered into between the parties on 17<sup>th</sup> August 2004. The Respondent's claim was that he had purchased 4 acres of land from the Applicant but the Applicant failed to hand over the suit property. His prayer therefore was for specific performance or a refund of the current purchase price. The trial court ordered that the Applicant refunds the Respondent the initial purchase price.
  7. Evidently, this matter is a land dispute and falls for adjudication under the Environment and Land Court which is established under Article 162 of *the Constitution* of Kenya, 2010 and whose jurisdiction



is outlined in Section 13 of the [Environment and Land Court Act](#), No. 19 of 2011 . The said provisions state thus:-

[Constitution of Kenya, 2010](#)

“ 162. System of courts

- (1) The superior courts are the Supreme Court, the Court of Appeal, the High Court and the courts referred to in clause (2).
- (2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—
  - (a) employment and labour relations; and
  - (b) the environment and the use and occupation of, and title to, land.
- (3) Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).”

[Environment and Land Court Act](#), No. 19 of 2011

“ 13. Jurisdiction of the Court

1. The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162 (2) (b) of [the Constitution](#) and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
2. In exercise of its jurisdiction under Article 162(2) (b) of [the Constitution](#), the Court shall have power to hear and determine disputes—
  - (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
  - (b) relating to compulsory acquisition of land;
  - (c) relating to land administration and management;
  - (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
  - (e) any other dispute relating to environment and land.” (emphasis added).

8. It is apparent therefore that this Court had no jurisdiction to entertain the Application in the first instance. In [Owners of the Motor Vessel “Lillian S” v Caltex Oil \(Kenya\) Ltd.](#) [1989], the court held thus: -

“Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment



it holds the opinion that it is without jurisdiction....Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given.”

9. Having found lack of jurisdiction, I exercised the inherent power of the Court to set aside the proceedings in this Miscellaneous Application.
10. The Application dated March 17, 2022, is struck out with no orders to costs. The parties are at liberty to pursue their case in the Environment and Land Court in Kericho.
11. Orders accordingly.

**RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 28TH DAY OF JUNE, 2022.**

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**R. LAGAT-KORIR**

**JUDGE**

**Ruling delivered in the presence of Ms. Chepkemoi h/b for Mr. Kariuki for the Applicant, the Respondent (Mr. John Kipng'etich Ruto) and Kiprotich (Court Assistant).**

