



Laichena v M'laichena & 5 others (Environment and Land Appeal E044 of 2021) [2023] KEELC 19057 (KLR) (26 July 2023) (Ruling)

Neutral citation: [2023] KEELC 19057 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL E044 OF 2021**

**CK NZILI, J
JULY 26, 2023**

BETWEEN

JULIUS THURANIRA LAICHENA APPELLANT

AND

MWONTUNE M'LAICHENA 1ST RESPONDENT

JOHN NTHINGAU LAICHENA 2ND RESPONDENT

M'MARIMBA M'THEWA 3RD RESPONDENT

JOSEPH MUTHAA M'MUTHURI 4TH RESPONDENT

JOSHUA MWETI M'MUTHURI 5TH RESPONDENT

JOEL KILILA RUKUNGA 6TH RESPONDENT

RULING

1. The application before the court is dated May 4, 2023, in which the appellant seeks reinstatement of his appeal for hearing and disposal on merits following dismissal on March 22, 2023 for non-compliance. In the alternative, the court is asked to extend the time within which the appellant can comply with the orders of the court.
2. The application is supported by grounds on its face and in the supporting affidavit of Julius Thurania sworn on 4.5.2023. The applicant averred that he was not to blame for non-compliance; his appeal had been reinstated earlier on condition that a record of appeal be filed within 14 days. The applicant averred he paid legal fees to P.M Majau & Co Advocates and that since he could not afford the deposit, he had offered his title deed for LR No. Meru/North/Athinga/Athanja/1404 as security. He attached the receipts and copy of the title deed as annexures marked JJ "1" and "2". Further, the applicant avers that he visited the law firm on April 3, 2023 and was assured that all the conditions set by the court had been fulfilled, only to be shocked on April 26, 2023 upon learning that what his lawyers had told him



were lies. He blames the said lawyers for failing to carry out his instructions; otherwise, if the appeal was not reinstated, he shall suffer grave prejudice, and the interests of justice require the application to be allowed.

3. The 4th respondent opposed the application through a replying affidavit sworn on May 9, 2023 by Joseph Muthaa M'Muthuuri on the basis that the appellant has been given more than enough chances but has consistently failed to heed the court's directives which showed lack of seriousness.
4. The 4th respondent deposed that blaming his lawyers for endless mistakes displayed his lack of diligence and indolence, yet litigation must end and that wasting the court's precious judicial time should not attract sympathy or lenience for him. The 4th respondent further averred that the 2nd & 6th respondents are all aged over 80 years and should not be tossed back and forth from one court to another. Similarly, the firm of Ndubi Ondubi & Co advocate was not properly on record to make this application.
5. On March 22, 2023, this court set aside the orders dismissing the applicant's appeal and conditionally reinstated it for hearing. The applicant never met the four conditions on time or at all. Therefore, the appeal stood and was confirmed as dismissed by this court on April 26, 2023. The applicant blames his lawyers for non-compliance. The 14 days granted by the court expired on 6.4.2023. The applicant did not approach the court before the expiry of that period for an extension of time or request to review the said orders.
6. When the matter came up for mention on April 26, 2023, the applicant told the court that he unknowingly instructed an unqualified advocate to represent him. He did not request for an extension of time to comply with court orders. He did not tell the courts the efforts he had put into motion to at least comply with filing the record of appeal in person or through an advocate. The applicant is the one who took the law firm. The applicant did not offer the title deed as security before the court on 26.4.2023. He did not also seek any variation of the court's orders.
7. The applicant was making a second request for the appeal's reinstatement for non-compliance. As rightly deposed by the respondents, the applicant has been a beneficiary of the court's discretion, from being granted leave to file the appeal out of time by a ruling delivered on 3.3.2021 in Meru ELC Misc. Application No. E009 of 2020 against the judgment delivered on 28.1.2020 in Tigania PMCC No.7 of 2019.
8. After that, the appeal was filed and admitted for hearing on May 3, 2021. The court directed that the record of appeal be filed in 60 days. There was non-compliance when the matter came for a pre-trial conference on September 27, 2021. The court granted the applicant 14 days to do so and file written submissions. On October 28, 2021, non-compliance was said to have been occasioned by the appellant not giving his lawyers on record sufficient instructions. The court had no option but to strike out the appeal for non-compliance.
9. Following an application dated November 8, 2022, the court gave the applicant a new lease of life. Unfortunately, the applicant did not learn from his past mistakes. He does not own up to his mistakes and instead blames his advocates. The appeal belongs to him and not his advocates, who he now says were unqualified to represent him before this court. There is also nothing before the court to show that the applicant conducted due diligence in choosing the said lawyers to claim they were unqualified.
10. The applicant's conduct shows that he has been reckless, indolent, and disinterested in prosecuting his appeal. In *CMC Holdings Ltd vs. James Mumo Nzioki* (2004) eKLR, the court held that though it has broad discretion, it was intended to help a party who suffered injustice or hardship due to an excusable mistake or error.



11. The applicant has driven himself out of the seat of justice by not adhering to court's directives. The court has bent over backward twice in favor of the applicant. The sword of justice cuts both ways. The respondents have explained the prejudice they have suffered so far, which is likely to continue if the application is allowed. Even as the applicants seek an extension of time, he does not exhibit any record of appeal, which he has complied with and is ready to be presented before the court.
12. For the foregoing reasons, I find that no good reasons have been advanced for this court to review its orders.
13. The application stands dismissed with costs.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON
THIS 26TH DAY OF JULY 2023**

In presence of

C.A John Paul

Applicant in person

HON. CK NZILI

ELC JUDGE

