



REPUBLIC OF KENYA



**Maroo v Gituto (Miscellaneous Case E014 of 2023)
[2023] KEELC 18865 (KLR) (18 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 18865 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
MISCELLANEOUS CASE E014 OF 2023**

JM MUTUNGI, J

JULY 18, 2023

BETWEEN

MIRIAM NKATHA MAROO PLAINTIFF

AND

ALPHONSO KIMARU GITUTO RESPONDENT

RULING

1. The Applicant vide a Notice of Motion application dated 11/5/2023 prays for the following orders:-
 1. That this Honourable Court be pleased to Grant leave to the Applicant to Appeal against the Judgment of E O Wambo –PM delivered on 28th day of February, 2023 in Kerugoya Principal Magistrate Civil Suit No 41 of 2017.
 2. That upon grant of prayer 1 above this honourable Court be pleased to deem the annexed draft Appeal as duly filed upon payment of the requisite fees.
 3. That upon grant of prayer of prayer 2 above, this Honourable Court be pleased that there be stay of execution of the Judgment and Decree in Kerugoya Principal Magistrate Civil Suit Case No 41 of 2017 pending hearing and determination of this application.
2. The application is premised on the grounds set out on the body of the application and on the Supporting Affidavit of the Applicant dated May 1, 2023. The Applicant avers that in the Judgment delivered by the Trial Court on February 28, 2023 she was ordered to vacate Plot No 9 Kianderi village and an order of permanent injunction was issued against her restraining her from entering, constructing or in any manner interfering with the said plot. The Applicant averred that she had not sold the suit plot to the Respondent but the Respondent had given her some money to file succession proceedings regarding her deceased husband. She further averred that her family was dependent on the suit plot for their livelihood and if they were evicted they would be rendered destitute.



3. The Respondent filed a Replying Affidavit dated 9/6/2023 in opposition to the application. The Respondent averred that the application for leave to Appeal has been brought nearly 3 months from the date the Judgment was delivered and no reason has been given for the delay. The Respondent further averred that the Respondent was represented by Counsel before the trial Court, and in case she was aggrieved she would have lodged the Appeal on time. The Respondent took the position that the filing of the Appeal could only be an afterthought.
4. Any party aggrieved by a Judgment has an automatic right of Appeal and requires no leave of the Court. Such an Appeal however has to be filed within the prescribed timelines. Section 16A of the [Environment and Land Court Act](#) No 19 of 2011 provides for Appeals from Subordinate Courts as follows:-

"16A. Appeals from subordinate

- (1) All appeals from subordinate courts and local tribunals shall be filed within a period of thirty days from the date of the decree or order appealed against in matters in respect of disputes falling within the jurisdiction set out in Section 13(2) of the Environment and Land Court Act, provided that in computing time within which the appeal is to be instituted, there shall be excluded such time that the subordinate court or tribunal may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order.
- (2) An appeal may be admitted out of time if the appellant satisfies the court that he had a good and sufficient cause for not filing the appeal in time."

5. From the above provision it is clear where the Appeal is not filed within the prescribed period the Appellant is required to satisfy the Court that there was good and sufficient cause for the delay.

Section 79G of the [Civil Procedure Act](#) echoes the provisions of Section 16A of the [Environment and Land Court Act](#) and provides for Appeals from the subordinate Courts as follows:-

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."

6. In the present matter before the Court, Judgment was delivered by the Subordinate Court on February 28, 2023. The present application was filed on May 11, 2023 nearly 2 ½ months or 72 days after the Judgment was delivered. The application as presented prays for leave to be granted to appeal against the Judgment of E O Wambo delivered on February 28, 2023. As I observed earlier in this Ruling no leave is required to appeal against a Judgment. The Applicant has not sought for enlargement of time to file the appeal and has not at any rate proffered any reasons or explanation for the delay in filing the appeal within the prescribed period of 30 days from the date of the delivery of the Judgment as the Law demands.



7. The enabling legal provisions being Section 16A of the *Environment and Land Court Act* and Section 79G of the *Civil Procedure Act* give the Court the power to extend and/or enlarge the period for filing an appeal but the Court in exercising its discretion under these provisions has to be satisfied by the Applicant that he had good and sufficient cause for not filing the Appeal on time.
8. In the present matter the Applicant under prayer (1) of the Notice of Motion only sought leave to appeal against the Judgment. This was unnecessary since the right of appeal was automatic. The Applicant did not give any explanation and/or reason why the appeal was not filed in time. The Court in the premises has no basis to consider whether or not to enlarge time for the Applicant to file the Appeal out of time. The application as presented is misconceived and constitutes abuse of the Court process. Prayers (2) and (3) of the Notice of Motion are dependent on prayer (1) of the Notice of Motion being granted. As prayer (1) cannot be granted for being superfluous, the said prayers also must fail.
9. Accordingly the Notice of Motion application is dismissed for being devoid of any merit. I make no order for costs and each party shall bear their own costs of the application.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 18TH DAY OF JULY 2023.

J. M. MUTUNGI

JUDGE

