



**Mwita v Jumanne (Environment and Land Miscellaneous Application
E017 of 2024) [2025] KEELC 2860 (KLR) (18 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 2860 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E017 OF 2024**

M SILA, J

MARCH 18, 2025

BETWEEN

SAMSON TABANI MWITA APPLICANT

AND

HULDAH GATI JUMANNE RESPONDENT

RULING

(Application seeking leave to file appeal out of time; need to provide good and sufficient cause for not filing appeal within time; applicant alleging to have had sick relatives; application filed more than 6 months after the judgment; court not persuaded by the reasons given and nothing particularly compelling in the case to move the court to allow the application; application dismissed)

1. The application before me is that dated 22 October 2024. In my assessment it seeks the following three substantive orders :
 - i. Grant of leave for counsel to come on record for the applicant.
 - ii. Stay of execution of the judgment delivered on 11 April 2024 in Kehancha SPMCC No. E054 of 2023 pending hearing of an intended appeal.
 - iii. Leave to appeal out of time.
2. From the proceedings annexed to the supporting affidavit, I discern that the applicant acted in person in the suit Kehancha SPMCC No. E054 of 2023. He had sued the respondent for special damages on the allegation that the respondent damaged his crops; general damages; costs of the suit; interest; and any further relief deemed fit. He alleged to be the owner of the land parcel Bukira/Buhirimono/6814 and he claimed that the respondent removed the fence, and damaged his bananas and sugarcane. This alleged damage to his crops formed the basis for his claim for special damages. I would assume that the claim for general damages was anchored on trespass. The respondent filed defence and denied the



- claims of the applicant. She is the owner of the land parcel Bukira/Buhiromonono/6815. She denied damaging the crops of the applicant though she pointed out to having a problem with the applicant and alleged that at some point he removed the fence.
3. The case proceeded for hearing culminating in the impugned judgment delivered on 11 April 2024. The trial Magistrate was not impressed by the case of the applicant. He found that he had not produced any report to prove the damage to his crops. On the allegation of trespass he found the same unproven as the applicant did not produce any survey report.
 4. It is this judgment that the applicant now intends to appeal against. He thinks that he has a good appeal. On why he did not lodge the appeal within the stipulated period, he has deposed that his family has been ailing and were on and off the hospital and he was unable to pursue the certified copies of the typed proceedings and the judgment promptly after delivery of the judgment. He states that he made an application for certified copies of typed proceedings on 29 January 2024 but was taken round in circles. He states that being a layman, he understood that the application for certified copies of the typed proceedings was inclusive of the certified copy of the judgment. He adds that he could not afford representation by an advocate as he is unemployed and depending on casual labour where he earns a meagre income which is only sufficient to cater for his family's basic needs. Later he got assistance of counsel, applied for a certified copy of the judgment, and he got the proceedings and judgment on 20 September 2024. He then made a decision to appeal.
 5. The application is opposed by the respondent. He points out that the application has been made 7 months after judgment and has therefore been brought after inordinate delay. He deposes that the bill of costs has already been taxed and the intended appeal has no chances of success.
 6. The application was argued through written submissions and I have taken note of the submissions of Ms. Karuiru, learned counsel for the applicant, and Mr. Abisai, learned counsel for the respondent. I hold the following view :
 7. I have no issue with granting leave for Ms. Karuiru to come on record for the applicant after judgment. That prayer is allowed.
 8. The second limb of the application relates to extension of time for lodging the appeal. The time for filing appeal is prescribed in Section 79G of the [Civil Procedure Act](#), Cap 21, Laws of Kenya, which provides 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 applicant 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.

9. From the above, it will be seen that the time for lodging an appeal from the Magistrates' Court is 30 days. Given that the judgment was delivered on 11 April 2024, it means that the appeal ought to have been filed on or before 11 May 2024. A litigant can benefit from additional time for the period certified by the lower court as having been required for preparation and delivery to the appellant of a copy of the decree or order. Now, in this day and age, the judiciary uploads all its judgments upon delivery.



It would mean that the judgment was accessible to the applicant either on the day of delivery of the judgment or shortly thereafter. The applicant has not brought before this court any certificate of delay, or any document to indicate that the lower court has certified a certain period as having been taken to avail to the applicant the order which in this case would be the judgment. You certainly do not need to have the proceedings in order to file the Memorandum of Appeal. Indeed the common practice is to file the Memorandum of Appeal, since it is time bound, and then pursue the proceedings for purposes of preparation of the record of appeal. It follows that the applicant needed to file his appeal within 30 days of 11 April 2024.

10. There is a proviso to Section 79G which allows court the discretion to admit an appeal out of time if the appellant satisfies court that he had 'good and sufficient cause' for not filing the appeal within time. We do not have a definition of what 'good and sufficient cause' may be which means that the court has to assess the reasons given on a case to case basis in order to determine whether they add up to 'good and sufficient cause.' Whatever the case, the time taken to file an application to file an appeal out of time also needs to be taken into account so that it is not inordinate.
11. In our case, the applicant has given a plethora of reasons. He has mentioned that he did not have proceedings but that, as I have pointed out above, was not a prerequisite to filing a Memorandum of Appeal. So long as the judgment was available, a Memorandum of Appeal could be filed. A failure to have certified copies of proceedings is therefore not good and sufficient reason. The other reason he has given is that his family was unwell and he has annexed some treatment documents. That to me is also not 'good and sufficient' cause. From the treatment notes annexed it is apparent to me that it was not the applicant who was indisposed but somebody else by the name of Damaris and the applicant has not deemed it prudent to disclose what relationship he has with her. Anyway, whoever was being treated was being treated as an outpatient for fairly common ailments. Even then, the treatment chits are for 4 April 2024, a date before the judgment, and 10 June 2024 and 20 October 2024 which are dates after the 30 days given for filing an appeal. It will also be seen that the hospital attendances were months between showing that this was not any sustained illness, but one off ailments, that are nothing unusual. It is a cheap shot for the applicant to try and use these as an excuse for not filing a Memorandum of Appeal in time. The other issue that the applicant has tried to raise is that he is of meagre means. He has not at all disclosed what this 'meagre income' may be. In any case, filing a Memorandum of Appeal is just about Kshs. 1,550/= and if the applicant could file suit for special damages, I am not persuaded that Kshs. 1,550/= was way beyond his reach if indeed he was very serious on filing the appeal. He has certainly not demonstrated that this amount was out of his reach.
12. I am also not particularly impressed by the time taken before filing this application. The application has been filed more than 6 months after the judgment. That is a long period of time unless it is adequately explained, and it has not. Indeed, it appears to me that the applicant went to sleep after he lost the case and only woke up when he was faced with a threat of execution for the taxed costs.
13. Maybe I would have been moved if the applicant had a particularly compelling case that cries out for hearing but I do not see any compelling case here. The applicant had more or less sued for trespass and special damages. He never produced any document to prove the special damages. Neither did he have anything tangible to prove trespass such as a survey report. I am not, in those circumstances, persuaded that there would be an arguable appeal and neither is the case of any compelling nature that the court would go out of its way to permit the applicant argue an appeal over it out of time. In any case if it is a boundary issue between the parties, they can as well proceed to the Land Registrar for resolution of the same. You do not need an appeal to do that.



14. I am not therefore persuaded that 'good and sufficient cause' has been shown so that this court may exercise its discretion to admit the appeal out of time. That being the position, I need not address myself on the issue of stay pending appeal.
15. For the above reasons, this application is dismissed with costs.
16. Orders accordingly.

DATED AND DELIVERED THIS 18 DAY OF MARCH 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

MIGORI

Delivered in the presence of :

Ms. Karuiru for the applicant

No appearance for Mr. Abisai for the respondent

Court Assistant - Michael Oyuko.

