



**Mugira v Ntarangwi (Environment & Land Miscellaneous Case
E021 of 2023) [2023] KEELC 20116 (KLR) (27 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 20116 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND MISCELLANEOUS CASE E021 OF 2023**

CK YANO, J

SEPTEMBER 27, 2023

BETWEEN

CHRISTOPHER MUGIRA APPLICANT

AND

JASON MUTHEE NTARANGWI RESPONDENT

RULING

1. Before me is notice of motion dated May 29, 2023 by the applicant seeking for extension of time to file appeal against the orders in Tigania PMCC ELC No. E076 of 2021 delivered on December 1, 2022 and stay of proceedings in that case pending hearing and determination of this application. The application is brought under order 42 rule 6 of the *Civil Procedure Rules* and section 79G of the *civil Procedure Act*.
2. The application is supported by the affidavit of Christopher Mugira, the applicant, sworn on May 29, 2023 and is premised on the grounds inter alia, that the applicant was dissatisfied with the said decision of the subordinate court and applied for the proceedings and ruling which delayed.
3. The applicant averred that he is the plaintiff in Tigania PMCC ELC NO. E076 of 2021 and had filed an application dated 28th March 2022 for contempt. That on 30th June 2022, the trial court found the respondent in contempt of the orders issued on March 17, 2022 but the respondent filed an application dated August 26, 2022 for review which was allowed by the trial court and which decision the applicant now intends to appeal against.
4. The applicant further averred that he had filed an appeal and an application seeking for stay of proceedings but the court dismissed the application on grounds that the same was filed out of time and without leave.
5. It is the applicant's contention that the application has been brought without inordinate delay and that no prejudice will be occasioned to the respondent if the application is allowed.



6. In his supporting affidavit the applicant has annexed copies of the application dated March 28, 2022, ruling, Memorandum of appeal and ruling dated March 19, 2023 in Meru ELCA Case No. E004 of 2023.
7. The application is opposed by the respondent who filed a replying affidavit sworn on June 9, 2023. It is the respondent's contention inter alia, that the delay in filing the intended appeal is inordinate and has not been fully explained, adding that the same is an afterthought and if allowed will seriously prejudice the respondent. That the intended appeal has no merit. The respondent urged the court to dismiss the application with costs.
8. The application was canvassed by way of written submissions which were duly filed by the parties through their respective advocates on record and which I have read and considered and need not reproduce.
9. I have considered the application and the submissions made. In the affidavit in support of the application, the applicant has deponed that he had previously filed an appeal and application for stay of proceedings in the lower court vide Meru ELCA No. E004 of 2023. Indeed the applicant has annexed copies of the memorandum of appeal and ruling dated March 19, 2023 in which this court (Nzili J) declined to grant orders of stay of proceedings in Tigania PMCC ELC case No. E 016 of 2022. The court further found that that appeal was filed out of time and without leave and dismissed the application. Now the applicant has filed the present application which seeks similar orders of stay of proceedings and extension of time to file appeal. The issues for determination are whether the application is res-judicata, and if not whether the orders sought should be granted.
10. Section 7 of the [Civil Procedure Act](#) provides as follows
 - “7. No court shall try any suit in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”
11. Section 28 of the [Environment and Land Court Act](#) also bars the court from adjudicating over disputes between the same parties relating to the same issues previously and finally determined by any court of competent jurisdiction. The res judicata principle is meant to lock out from the court system a party who has had his day in court of competent jurisdiction from re-litigating the same issues against the same opponent. The principle also applies to applications with the same force whether the application be final or interlocutory.
12. In the case of [John Florence Maritime Services Limited & another vs Cabinet Secretary for Transport & Infrastructure & 3 others](#) [2015] eKLR, the Court of Appeal stated-;
 - “The rationale behind res-judicata is based on the public interest that there should be an end to litigation coupled with the interest to protect a party from facing repetitive litigation over the same matter. Res-judicata ensures the economic use of court's limited resources and timely termination of cases. Courts are already clogged and overwhelmed. They can hardly spare time to repeat themselves on issues already decided upon.”
13. Having perused the application dated May 29, 2023 and the memorandum of Appeal and ruling in Meru ELCA no. E004 of 2023 delivered on March 19, 2023, there is no dispute that the parties are the



same in all these proceedings. In ELCA No. E004 of 2023, the applicant was seeking almost similar orders as the ones in the present application or issues which could have been raised in the earlier suit. This court heard and determined the applicant's application in ELCA No. E004 of 2023.

14. The statutory provisions under section 7 of the *Civil Procedure Act* and section 28 of the Environment and Law Act are clear and bars a court from hearing a suit or application or issue if the same was substantially in issue in a former suit between the same parties, if the issue was determined in a former suit after a hearing. Whatever issues being raised now could have been raised in ELCA No. E004 of 2023. By virtue of section 7 of the *Civil Procedure Act* and section 28 of the *Environment and Land Court Act*, this application is barred by the doctrine of res-judicata.
15. It is my finding that the notice of motion dated 29th May 2023 is an abuse of the court process as it raises issues which had been substantially litigated and adjudicated upon by a court of competent jurisdiction in ELC No. E004 of 2023 or issues which could have been rightly raised in that case. Consequently, the application is hereby dismissed with costs to the respondent.
16. Orders accordingly

DATED, SIGNED AND DELIVERED AT MERU THIS 27TH DAY OF SEPTEMBER, 2023

C.K YANO

JUDGE

