



Wambulwa v Wanyonyi (Environment and Land Miscellaneous Application E013 of 2023) [2023] KEELC 20318 (KLR) (26 September 2023) (Ruling)

Neutral citation: [2023] KEELC 20318 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E013 OF 2023
EC CHERONO, J
SEPTEMBER 26, 2023**

BETWEEN

VINCENT WEKESA WAMBULWA APPLICANT

AND

JACKSON WALUMBE WANYONYI RESPONDENT

RULING

1. Vide a Notice of Motion application dated May 3, 2023, the Applicant seeks the following Orders;
 1. (spent)
 2. That this Honourable Court be pleased to extend time within which to file an Appeal out of time.
 3. That Costs be in the cause.
2. The application is based on the following grounds;
 - a. That the applicant has drafted an appeal against BGM ELC NO.433 of 2018
 - b. That the Applicant tried to file the said appeal when he visited the High Court Registry he was informed that time to file an appeal had already elapsed considering the judgment delivered on the March 17, 2023 hence need for extension of time.
 - c. That the orders sought be granted.

Applicants Summary Of Facts

3. The Applicant in his supporting affidavit deposed as follows;
 1. The Honourable Court issued Eviction orders on the March 17, 2023



2. That he was never served with the Eviction Notice.
3. That he therefore Request this Honourable Court to grant him extension of time within which to file an appeal.
4. The Respondent did not file any response to the application despite having been duly served.

Legal Analysis And Decision

5. I have considered with anxious care the Notice of Motion application brought under Certificate of urgency dated May 3, 2023 and the supporting affidavit as well as the applicable law. It is trite that an application for extension of time to file appeal out of time is not a right of a litigant but an equitable remedy to be exercised by the court upon sufficient grounds being given for the delay which must not be inordinate and prejudicial to the opposite party. The application must also be brought without unreasonable delay.

The impugned order which the applicant is seeking extension of time to appeal against is said to have been delivered on March 17, 2023. According to the applicant, he was not served with the eviction Notice. He has attached a copy of an Eviction Notice, a Decree in Bungoma CMCC NO 433 of 2018 and a Memorandum of Appeal.

6. From the materials placed before me and the affidavit evidence which is not controverted, I find that though the applicant has taken a considerable period of about two months, the explanation given for the delay is satisfactory and not inordinate in the circumstances. I also find that the Respondent will not be unduly prejudiced if the application is allowed.

Cumulatively, I find the Notice of Motion application dated March 3, 2023 merited and the same is hereby allowed in the following terms;

1. The Applicant is granted leave to appeal against the orders of the trial Magistrate Hon CAS Mutai (SPM) issued on March 17, 2023 within fifteen (15) days from the date of this Ruling.
2. The Costs of this application to abide the intended Appeal.

**READ, DELIVERED AND SIGNED IN THE OPEN COURT/VIRTUALLY AT BUNGOMA THIS
26TH DAY OF SEPTEMBER, 2023**

HON.E.C CHERONO

ELC JUDGE

In the presence of;

Applicant-present

Respondent/Advocate-absent

Joy - C/A

