



**Nyaberi v Okiambe & another (Miscellaneous Case E004 of 2023)
[2023] KEELC 22597 (KLR) (31 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 22597 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
MISCELLANEOUS CASE E004 OF 2023
JM KAMAU, J
OCTOBER 31, 2023**

BETWEEN

PAULINE BOSIBORI NYABERI PLAINTIFF

AND

PETER NYABERI OKIAMBE 1ST DEFENDANT

HYLINE KERUBO 2ND DEFENDANT

RULING

1. By Notice of Motion dated 4/9/2023 the applicant, intending appellant Pauline Bosibori Nyaberi is an aggrieved party. In Keroka Principal Magistrate's Court MCCC Misc. E013 of 2021 a Ruling was delivered on 24/11/2021 in which she was cited for contempt of court as ordered on 24/11/2021. By the time she got to know of this Ruling /Order time to file an Appeal in respect of the orders given by the court had already lapsed. She now seeks to be granted leave to file an Appeal out of time. Though she has not exhibited the ruling/order she seeks to appeal against, the respondent, through the 1st respondent in a replying affidavit sworn on 26/9/2023, has attached a copy of the said ruling. The orders emanated from an Application dated 28/3/2021 seeking an order that a licensed Surveyor visits Land Parcel number Nyankono settlement scheme/120 for the certification of the beacons on the land.
2. The same was allowed on 24/11/2021. The 1st Respondent retorts that the Orders if granted would greatly prejudice him since he has already subdivided and developed a large portion of the suit land. He therefore opposed this Application.
3. Under order 50 rule 6 of the *Civil Procedure Rules* Orders to extend time to file an Appeal out of time is at the discretion of the court. The same can be extended even after the time to do an act has already expired. Section 79 G of the *Civil procedure Act* (cap 21 laws of Kenya) provides that an Appeal from a subordinate court to the High court shall be file within a period of 30 days from the date of the decree or order appealed against provided that an Appeal may be admitted out of time if the Appellant satisfies



the court that he had good grounds and sufficient cause for not filing the Appeal out of time. The time that has lapsed since the Ruling was delivered on 24/11/2021 is inordinately too long. It is also on record that as early as February 2023, the Applicant knew there was an order in court against her as she has clearly stated in her Application. It then took her another 8 months before moving this court for extension of time. This delay is unacceptable bearing in mind that the Title to the suit property has already been surrendered and closed and the new owners would be disadvantaged due to mistakes that are not theirs. The Application dated 4/9/2023 is consequently dismissed. Since this is a family matter, I make no Orders as to costs.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 31ST DAY OF OCTOBER, 2023

MUGO KAMAU

JUDGE

In the Presence of: -

Court Assistant: - Brenda

Mr. Anyoka for the Appellant

Mr. Ondigo for the Respondents

