



Ongwae & another v Ongwae & 12 others (Environment & Land Case E003 of 2023) [2023] KEELC 22603 (KLR) (31 October 2023) (Ruling)

Neutral citation: [2023] KEELC 22603 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT & LAND CASE E003 OF 2023**

**JM KAMAU, J
OCTOBER 31, 2023**

BETWEEN

TERESA ONGWAE & ANOTHER PLAINTIFF

AND

JOSIAH MIINGA ONGWAE & 12 OTHERS DEFENDANT

RULING

1. The applicant filed an application on 31/8/2023 seeking for the following order:-

That the Honourable court be pleased to grant the applicants leave to appeal out of time against the Ruling and order given on the 25/7/2023 in Nyamira Chief Magistrate’s Miscellaneous application and any other relief that the Court may deem fit to meet the ends of justice”.

2. In their grounds and Affidavit supporting the said Application, the Applicants deponed that the Chief Magistrate, Honourable Chepseba, delivered the ruling without giving them notice of delivery of the ruling and that therefore the applicants were not aware of the delivery of the ruling. The same ought to have been delivered on 27/6/2023 but it was not and the Court records show that it was delivered almost 2 months later, on 25/8/2023 after which the respondents’ advocate served their advocate with a mention notice. The applicants came to know about this after the expiry of the statutory period set for appeals.

3. The respondents through the 2nd ‘respondent, Ronald Mogeni Ombachi responded in a replying affidavit by deponing that the offending ruling was delivered on 25/7/2023 in their favour which is the date it had been scheduled for delivery after it was postponed on 27/6/2023 to 18/7/2023 since the Applicants’ counsel did not appear in court, then adjourned to 29/7/2023 and finally to 25/7/2023. The respondents depone that it is now more than 14 years since the award of the tribunal which the



applicants seek to challenge was made and that the same is not appealable and the Application should therefore be dismissed with the costs.

4. It is true that the decision that the applicants intend to challenge or appeal against is that of Borabu Land Disputes Tribunal in case No. 3 of 2008. The same was adopted under section 7 of the Land Disputes Tribunal Act of 1990.
5. It is not the duty of this court at this stage to decide whether there is an arguable appeal or not.
6. The respondents have admitted that the ruling on the adoption of the award was first scheduled to be delivered on 27/6/2023 when it was not. The Applicants' Counsel did not attend court on this day. We are not told whether there was any effort at notifying counsel that the same was adjourned to 18/7/2023 when again it was not delivered. On 20/7/2023 the scenario was the same and it was not until 25/7/2023 that the Ruling was delivered. By this time, the Applicants and their counsel must have lost track since once a Judgment /Ruling date is given in court, the file is kept in the custody of the Trial Magistrate until the delivery of the same. Whether counsel for the Applicants failed to turn up on 27/7/2023 or not, it was the duty of the court and the other counsel to ensure that he is served with a Notice indicating when he is supposed to appear in court next. This is very crucial and cannot be taken for granted. There is no evidence that this was ever done.
7. Finally, it was incumbent upon counsel for the Respondent to immediately ensure that the other party came to know the Decision of the court so that and give him an opportunity to comply. Again, there is no evidence that this was complied with. Having said so, I would not hesitate to grant the prayers sought for *vide* the Applicants' Application dated 29/8/2023 on condition that the intended appeal is filed within the next 30 days from the date hereof in default of which the leave granted herein shall automatically lapse.
8. The costs of this Application will abide the outcome of the appeal, if any.

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

MUGO KAMAU

JUDGE

In the Presence of:-

Court Assistant: - Brenda

Ms Nyachiro for the Applicant.

No appearance for the Respondents.

