



**M'ringera v Ringera (Environment & Land Miscellaneous Case  
E001 of 2023) [2023] KEELC 21725 (KLR) (23 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21725 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND MISCELLANEOUS CASE E001 OF 2023**

**CK YANO, J**

**NOVEMBER 23, 2023**

**BETWEEN**

**EVANGELINE MUNYANGE M'RINGERA ..... PLAINTIFF**

**AND**

**JACOB MUNENE RINGERA ..... DEFENDANT**

**RULING**

1. The application for determination is the notice of motion dated 24<sup>th</sup> July, 2023 brought under order 42 rule 6 and order 50 of the *Civil Procedure Rules* and all other enabling provisions of the law. The applicant is mainly seeking leave to appeal out of time against the judgment delivered on 31<sup>st</sup> March 2023 in Githongo SPM ELC case No. 12 of 2022 by Hon. S. Ndegwa, SPM, and an order of stay of execution of the said judgment pending the hearing and determination of the intended appeal.
2. The application is supported by the affidavit of the applicant sworn on 24<sup>th</sup> July, 2023. The applicant states that she wishes to appeal against the said judgment/decreed but the permitted time of appeal of 30 days have lapsed. That the delay in filing the appeal was not intentional but was caused by the applicant's previous advocates, Clarisse & Associates Advocates who failed to file the appeal on time on grounds of indisposition of the instructed counsel.
3. It is the applicant's contention that the intended appeal is arguable and meritorious and will be rendered nugatory if stay of execution is not granted and that the applicant stands to suffer prejudice if the application is not allowed. In her supporting affidavit the applicant has annexed copies of the decree, a receipt dated 18<sup>th</sup> April 2023 and letter dated 19<sup>th</sup> April 2023 on closure of Nanyuki office of Clarisse & Associates Advocates.
4. The application is opposed by the respondent through a replying affidavit dated 19<sup>th</sup> September, 2023. The respondent pointed out that the applicant was being represented by M/S Mokuia & Associates Advocates and that the alleged firm of M/s Clarisse & Associates Advocates was not on record for the



applicant at all. The respondent stated that the applicant did not even apply or pay for the proceedings and has just rushed to this court to forestall the execution of the decree. The respondent contended that the applicant is guilty of inordinate and unreasonable delay the judgment by the lower court having been delivered over 5 months before the application was filed and that the delay has not been explained at all. The respondent has also disowned the signature in the affidavit of the applicant and sought for the same to be struck out because it is not the applicant's signature.

5. It is also the respondent's contention that the application is incompetent, bad in law and untenable since there is no appeal before court and there is no basis for granting orders of stay of execution. The respondent argues that he has a valid decree and there are no reasonable grounds to deny him the fruits of the judgment. The respondent contended that the application is unmerited and should be rejected.
6. The application was canvassed by way of written submissions. The applicant filed her submissions dated 27<sup>th</sup> October, 2023 through the firm of R.K Mwenda & Associates Advocates while the respondent filed his dated 28<sup>th</sup> September, 2023.
7. I have considered the application and the submissions and the authorities relied upon by the advocates for the parties. This is an application for leave to appeal against the judgment delivered on 31<sup>st</sup> March 2023 in Githongo SPMC ELC case no. 12 of 2022 as well as an order for stay of execution.
8. With regard to the prayer for leave to appeal out of time, Section 79G of *Civil Procedure Act* gives a court the discretion to extend time and admit an appeal out of time if it is satisfied that there was sufficient cause for not filing the appeal in time.
9. In the case of *Nicholas Kiptoo Arap Korir Salat Vs Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR, the Supreme Court of Kenya set out the principles to be applied in such application as follows;

“This being the first case in which this court is called upon to consider the principles for extension of time, we derive the following as the underlying principles that a court should consider in exercise of such discretion-;

1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court,
  2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court,
  3. Whether the court should exercise the discretion to extend time is a consideration to be made on a case to case basis;
  4. Whenever there is a reasonable reason for the delay, the delay should be explained to the satisfaction of the court.
  5. Whether there will be any prejudice suffered by the respondents if the extension is granted,
  6. Whether the application has been brought without undue delay, and
  7. Whether in certain cases, like election petitions, public interests should be a consideration for extending time.”
10. In the instant case, the judgment was delivered on 31<sup>st</sup> March 2023 while this application was filed on 2<sup>nd</sup> August 2023. That is a period of about four months. The delay, in my view was inordinate. The



applicant in explaining the delay claims that the delay in filing the appeal in time was occasioned by her advocate then on record M/s Clarisse & associates advocates who never filed the appeal despite being instructed to do so. However, the respondent responded by stating that the applicant was being represented by the firm of M/S Mokuia & Associates Advocates. The applicant never controverted the averment made by the respondent. Other than annexing a receipt in the name of M/S Clarisse & Associates Advocates, the applicant did not show anything in the form of a pleading or even a notice of appointment filed by the said firm. As already stated, the respondent disowned the said firm, stating that it was never on record. It was therefore incumbent upon the applicant to counter the averment made by the respondent, which she failed to do. In the circumstances, I find that there was inordinate delay which is not explained satisfactorily in not filing the application timeously.

11. The applicant has also contended that the intended appeal is arguable and meritorious. However, there is no draft memorandum of appeal that has been exhibited by the applicant for the court to make a decision on that issue.
12. Further, the applicant has admitted that she was being represented by another firm other than the one that has filed the instant application. Order 9 Rule 9 of the Civil Procedure Rules is clear that no new advocate can take over the conduct of a suit which was finally determined without the leave of the court through a formal application or by consent of the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be. Rule 10 of Order 9 provides that an application under Rule 9 may be considered with other prayers provided that the question of change of advocate or party intending to act in person shall be determined first.
13. In the present case, the firm of R.K Mwenda & Associates Advocates have filed the application herein. I note that the applicant has stated that she was previously being represented by the firm of Clarisse & Associates Advocates (though the respondent states that it was the firm of M/S Mokuia & Associates Advocates). Whatever the case it is clear that no consent has been filed between the firm of R.K Mwenda & Associates Advocates and the outgoing advocate who was previously representing the applicant herein. There is also no dispute that in the application herein, there is no prayer seeking leave for the firm of R.K Mwenda & Associates Advocates to come on record for the applicant herein. It is not in dispute that judgment was delivered in the matter on 31<sup>st</sup> March 2023. It follows therefore that the application is incompetent and fatally defective as it was filed without authority and leave of the court as required by order 9 rule 9 of the Civil Procedure Rules and must fail in its entirety including the prayer for stay.
14. The upshot is that the application dated 24<sup>th</sup> July, 2023 is incompetent fatally defective and devoid of merit and the same is dismissed with costs.

**DATED, SIGNED AND DELIVERED AT MERU THIS 23<sup>RD</sup> DAY OF NOVEMBER, 2023**

**IN THE PRESENCE OF-;**

Court assistant – V. Kiragu/Lena M.

Ms Mugo for respondent

No appearance for applicant

**C.K YANO**

**JUDGE**

