



Kata v Esposito (Civil Appeal E066 of 2024) [2025] KEELC 3507 (KLR) (30 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3507 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI**

CIVIL APPEAL E066 OF 2024

EK MAKORI, J

APRIL 30, 2025

BETWEEN

JONATHAN NGUMBAO KATA APPLICANT

AND

FRANCO ESPOSITO RESPONDENT

RULING

1. The application currently under consideration is dated November 11, 2024, and seeks the following orders:
 - a. Expended.
 - b. It is respectfully requested that this honorable court issue an order to stay the execution of the ruling made on the 28 day of October, 2024, by the Honorable E.K. Usui (CM), along with any subsequent consequential orders arising from the verdict against the defendant/applicant, whether by himself, his agents, servants, or any individuals acting on his behalf, until the determination of this matter.
 - c. It is respectfully requested that this court issue an order to stay the execution of the consent judgment dated 21 December 2020 and the decree issued on 22 December 2020, along with any consequential orders arising from the judgment against the defendant/applicant, whether by the defendant/applicant himself, his agents, servants, or any individual acting on his behalf in any capacity, until the determination of the intended appeal by the applicant.
 - d. That the court grant leave and admit the applicant's appeal out of time against the judgment dated 21 December 2020, which directed the appellant to transfer his entire 6.5 acres of land situated at Chembe/Kibabamshe/414 to the respondent, despite the court lacking pecuniary jurisdiction.
 - e. The costs associated with this application be provided.



2. Upon reviewing the materials and submissions presented by the parties, I ascertain that the application seeks to appeal the orders issued by the lower court, which directed police assistance on 28 October 2024, to facilitate the respondent in taking possession of the suit property as stipulated in the consent judgment issued by the lower court on 21 December 2020.
3. The applicant rigorously asserts that the court lacked pecuniary jurisdiction to render the consent judgment, as the valuation report acquired indicates that the property was assessed at an amount exceeding Kshs. 68,000,000/-, surpassing the jurisdictional limits of the Magistrates Court. Conversely, the respondent argues that the valuation report underpinning the consent determined the property's value to be Kshs. 17,000,000/-, thereby establishing the jurisdiction of the Magistrates Court.
4. The intended appeal will endeavor to offset the consent judgment dated 21 December 2020. The initial consideration, therefore, is whether this court should authorize an extension of time within which to submit the intended appeal.
5. From the records, the applicant did not address the excessive delay in filing the intended appeal, a judgment entered approximately five years ago. Instead, the applicant focused on the valuation report, which was obtained much later after the impugned consent judgment had been issued.
6. The respondent contends that the intended appeal is subject to laches and delays for which no justification has been provided. In the case of *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundary Commission & 7 others* [2014] eKLR, the Supreme Court enumerated the following principles that a court should contemplate in exercising its discretion related to an application for an extension of time:
 - a. An extension of time is not an entitlement for a party. It constitutes an equitable remedy accessible solely to a deserving party at the court's discretion.
 - b. A party seeking an extension of time must demonstrate sufficient grounds to the court's satisfaction.
 - c. The court's discretion to extend time is determined on a case-by-case basis.
 - d. A reasonable explanation for the delay must be provided, which should satisfy the court.
 - e. Consideration must be given to any potential prejudice the respondents may suffer if the extension is granted.
 - f. The timeliness of the application must be scrutinized to ensure it has been submitted without undue delay; and
 - g. In circumstances such as election petitions, public interest considerations should be acknowledged when evaluating extensions of time.
7. In the present matter, the impugned judgment was rendered on 21 December 2020. By Section 79G of the *Civil Procedure Act*, the appeal was to be filed by 21 January 2021. The current application was submitted five years later without a reasonable justification for this delay; on this point, the application should be dismissed with costs.
8. On determining whether to grant a stay and the expectation of a meritorious appeal, the applicant acknowledges that the intended appeal seeks to contest the consent judgment entered on 21 December 2020. The consent judgment referenced in the supporting affidavit by the applicant asserts that the consent was obtained through fraudulent means; this fraud, particularly perpetuated by counsel during the execution of the said consent, has not been substantiated. Referring to the decision cited by



the respondent, I concur with *Hirani v Kassan* [1952] 19 EACA 131, wherein the court elaborated on the circumstances under which a consent judgment may be interfered with, the court stated as follows:

“prima Facie, any order made in the presence and with the consent of the counsel is binding on all parties to the proceedings or action, and on those claiming under them cannot be varied or discharged unless obtained by fraud or collusion or by agreement contrary to the policy of the Court or if the consent was given without sufficient material facts, or in general for a reason which would enable the court to set aside an agreement”.

9. In the application, the applicant contended that the lower court lacked jurisdiction to adjudicate the matter and acquiesced to the consent judgment. As clarified by the parties during their consent, the valuation report upon which the consent was founded determined the value of the subject property at Kshs. 17,000,000/-, which is well within the jurisdiction of the Magistrates Court.
10. The upshot is that I see nothing to stay, the application dated 11 November 2024 lacks merit and is hereby dismissed with costs.

DATED, SIGNED, AND DELIVERED VIRTUALLY IN MALINDI ON THIS 30TH DAY OF APRIL 2025.

E. K. MAKORI

JUDGE

In the Presence of:

Ms. Amina for the Applicant

Mr. Otara for the Respondent

Happy: Court Assistant

