



Mulewa v Muhambi (Suing as Administrator Ad Litem of the Estate of Charo Muhambi Kaloki) (Environment and Land Miscellaneous Application E023 of 2024) [2025] KEELC 3531 (KLR) (30 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3531 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E023 OF 2024
MD MWANGI, J
APRIL 30, 2025

BETWEEN

GLADYS ANDREW MULEWA APPLICANT

AND

KAHINDI CHARO MUHAMBI RESPONDENT

SUING AS ADMINISTRATOR AD LITEM OF THE ESTATE OF CHARO MUHAMBI KALOKI

RULING

1. The subject of this ruling is a Notice of Motion Application dated 18102024 and brought under Sections 1A, 1B, 3, 3A, 79G and 95 of the *Civil Procedure Act* and Order 42 Rule 6 of the Civil Procedure Rules. The orders sought were framed as follows: -
 1. Spent;
 2. That the Applicant be granted leave to appeal out of time against the whole judgment delivered on 2852024 by Hon. J. Ong'ondo (SPM) and the orders issued in the Chief Magistrate Court at Malindi in Land Case No. 26 of 2018;
 3. That costs of this application be borne by the Respondent.
2. The Application is based on the grounds enumerated in the motion and supported by an affidavit sworn on the even date by Kandia Lisamadi, the Applicant's advocate. Counsel deposed that the trial court delivered judgment on 2852024 in favour of the Respondent herein, granting him exclusive possession and ownership of the suit property comprised in LR Number KilifiJilore154. Aggrieved by the said decision, the Applicant filed a memorandum of appeal dated 3152024 and an application evenly dated for stay of execution of the judgment. He added that he inadvertently failed to seek, in that



application, extension of time to file an appeal out of time hence the present application. According to counsel, the mistake was on his part and it should not be visited upon his client. He asserted that the Applicant has an arguable appeal with a high probability of success and that the Respondent shall not suffer any prejudice if the application is allowed.

3. The Respondent opposed the application. He filed a Replying Affidavit which he personally swore on 14/11/2024, wherein he stated that by the time the Applicant filed the application dated 31/5/2024, time to file appeal had not lapsed hence there was no need to seek leave of the court; that the Applicant and his advocate only came to the realization that they had not filed an appeal on 30/7/2024, when they were served with a Notice of Preliminary Objection and replying affidavit in response to their application of 31/5/2024. Even after that realization, it took the Applicant more than two months to bring the present application. According to the Respondent, no cogent explanation has been offered as to why the appeal was not filed on time even after obtaining orders for stay of execution. The Respondent asserted that the application is an afterthought and an abuse of the court process meant to deny the fruits of judgment.
4. Despite the Court directing parties to file written submissions on the application, neither party complied with those directions. Notably, on the CTS, there is a copy of written submissions dated 18/10/2024, and headed “applicant’s Submissions (In respect to the Application dated 18th October, 2024)”; I have however perused the same, and establish that the contents thereof are in relation to a different application dated 31/5/2024 on stay of execution.
5. In the circumstances, I dismiss the application dated 18/10/2024 for want of compliance with the court’s directions.

DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 30TH DAY OF APRIL 2025.

MWANGI NJOROGE

JUDGE

