



REPUBLIC OF KENYA



Rinka v Ngeeti (Appeal 40 of 2021) [2023] KEELC 22269 (KLR) (14 December 2023) (Ruling)

Neutral citation: [2023] KEELC 22269 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
APPEAL 40 OF 2021
EM WASHE, J
DECEMBER 14, 2023

BETWEEN

JOSEPH MUIYA RINKA APPLICANT

AND

ISAAC NGEETI RESPONDENT

RULING

1. The Appellant (hereinafter referred to as “the Applicant”) approached this Honourable Court by way of a Notice of Motion dated 2nd June 2023 (hereinafter referred to as “the present application”) seeking for the following Orders against the Respondent; -
 - a. That the Court to grant leave or okaying the applicant enough time to create proper records of Appeal since it is a big task to erect this document and even some advocates do not know the way it is being created thus costs a lot of money to the one who may try to erect it.
 - b. That in the alternative, the Court to grant leave or okay to allow the applicant to seek justice in commission known as Judiciary Ombudsman (OJO) because the Applicant already submitted his complaint in it and given ticket number AAA-0000-0266 as Applicant Court to wait their solutions because they were underway to help the Applicant.
 - c. That furthermore, the Applicant has another Civil Case at Kilgoris Law Court touching Respondent and their family of which the Applicant sees its better and good for Court to accumulate or consolidate these files together and issue a final verdict for both cases since there is no need for solving halfway and halfway left boiling hot.
2. The prayers sought in the present Applicant are premised on the grounds outlined in the body and further through the Supporting Affidavit sworn on the 2nd of June 2023.
3. The main grounds in support of the prayers in the present Applicant can be summarised as follows; -



- i. The Applicant herein is desirous of filing a Record of Appeal against the judgement pronounced on the 29th of May 2020 in the proceedings known as Kilgoris PMC ELC Case No 19 OF 2018.
 - ii. Pursuant to this judgement pronounced on the 29/05/2020, the Applicant herein filed a Memorandum of Appeal on the 12/06/2020.
 - iii. The Applicant after a lot of difficulties filed a Record of Appeal dated 12/10/2023 which upon being heard on its merits was struck out through a Judgement pronounced on the 27/04/2023.
 - iv. Nevertheless, in the judgement pronounced on the 27/04/2023, the Applicant was granted leave of 14 days to prepare, file and serve a new Record of Appeal if need be.
 - v. Unfortunately, the Applicant filed a second Record of Appeal on the 29th of June 2023 which was way beyond the 14 days leave period granted on the 27/04/2023.
 - vi. In essence therefore, the Applicant is seeking for enlargement of time within which to file the said Record of Appeal and have the same deemed to be properly filed within time.
 - vii. In the alternative, the Applicant is seeking for a consolidation of this present Appeal with the proceedings known as Kilgoris PMC ELC Case No 15 of 2020 which relates to one and the same suit property LR No Transmara/Ololchani/684.
4. The present Application was duly served on the Respondent although the Honourable Court did not find a Replying Affidavit in opposition of the same.
 5. However, the Respondents filed written submissions on the 9/11/2023 in opposition of the present Application as well as prosecution of a separate application.
 6. Be as it may, the issues for determination in the present Application are as follows; -
 - Issue No 1- Is the applicant entitled to a prayer of enlargement of time to file the record of appeal?
 - Issue No 2- Is the applicant entitled to a prayer of consolidation of this proceedings with Kilgoris ELC Case No 15 of 2020?
 - Issue No 3- Who bears the costs of this application?
 7. This Honourable Court having duly identified the issues for determination in the present application, the same will now be discussed hereinbelow.

Issue No 1- Is the applicant entitled to a prayer of enlargement of time to file the record of appeal?

8. To begin with, it is clear in the mind of this Honourable Court that the Judgement which the Appellant who is the Applicant is seeking to challenge was pronounced on the 29/05/2020.
9. The Memorandum of Appeal against this judgement pronounced on the 29/05/2020 was first filed 12/06/2020.
10. Pursuant to a Ruling delivered on the 8/11/2021 in an Application dated 5/07/2020, the Applicant was granted leave of 30 days to prepare and file his a substantive Record of Appeal.
11. Unfortunately, the Applicant failed to prepare and file a Record of Appeal within the 30 days granted in the said Ruling dated 8/11/2021.
12. The Respondents then applied through an Application dated 04/05/2022 to have the Applicant's Memorandum of Appeal struck out for having been filed out of time.



13. The Honourable Court with a view of giving an opportunity to the Applicant to have his day in Court declined to grant the prayers sought by the Respondent through the Application dated 04/05/2022 and directed that the Appeal be heard on its merits.
14. Based on these directions by the Honourable Court, the Applicant filed a Record of Appeal dated on the 12/10/2022 which was heard on merit and a judgement striking out the said Record of Appeal was pronounced on the 27/04/2023.
15. Although the Honourable Court struck out the Record of Appeal, it also granted the Applicant 14 days to prepare, file and serve a new Record of Appeal.
16. This particular direction given to the Applicant was not complied with until 29/06/2023 when he filed the second Record of Appeal.
17. By this time, the period of 14 days had already lapsed and therefore the leave of 14 days granted on the 27/04/2023 expired.
18. The Applicant's main ground for not being able to comply with the directions of the Honourable Court issued on the 27/04/2023 is because the process of preparing a Record of Appeal is very complicated that even Advocates do not know how to do it.
19. Secondly, the Applicant states that he was not able to comply with the 14 days period to file the Record of Appeal because he did not have funds to procure the services of an Advocate to assist in the preparation of the said Record of Appeal.
20. In essence therefore, the Applicant submits that this Honourable Court should allow the Record of Appeal filed on the 29/06/2023 and hear the same on merit.
21. To begin with, it is clear in the mind of this Honourable Court that this particular file has been in the Court corridors for a period of over 2 years now.
22. The Applicant filed the Memorandum of Appeal on the 12/06/2020 and ever since then, no proper Record of Appeal has been filed.
23. The Record of Appeal filed on the 12/10/2022 which was heard on its merit was struck out on the 27/04/2023 for failing to comply with the law.
24. This judgement of pronounced on the 27/04/2023 was not appealed against by the Appellant.
25. The judgement pronounced on the 27/04/2023 granted leave of 14 days to the Applicant to prepare, file and serve a new Record of Appeal that was in compliant with the law.
26. Unfortunately, the Applicant did not comply within the period of 14 days provided therein for the reason that preparing a Record of Appeal is a complicated task that even advocates do not apprehend the same.
27. The simply answer to the Applicant in what should be contained in a Record of Appeal is the [Civil Procedure Act & 2010 Rules](#) and the [Appellate Jurisdiction Act, 2010](#).
28. These two Statutory Acts provide for the manner and contents of what should be in a Record of Appeal.
29. The allegation that an act of preparing a Record of Appeal is so complicated is not legitimate and cannot give a sufficient ground as to why the Applicant failed to comply with the directions issued in the judgement dated 27/04/2023.



30. In other words, this Honourable Court declines to enlarge the time of 14 days granted in its judgement dated 27/04/2023 and any Record of Appeal filed after the expiry of the same period is fatally defective and should be dismissed thereof.

Issue No 2- Is the applicant entitled to a prayer of consolidation of this proceedings with Kilgoris PMC ELC Case No 15 of 2020?

31. The second issue for determination is whether this proceeding should be consolidated with the proceeding known as Kilgoris PMC ELC Case No 15 of 2020.

32. According to the Applicant, this present proceeding and Kilgoris PMC ELC Case No 15 of 2020 relate to one and the same suit property and therefore the issues in these two proceedings should be heard and determined together.

33. First and foremost, the question in the mind of the Honourable Court is whether there is any issue for determination in this present proceeding.

34. The proceeding before this Honourable Court is an Appeal from the proceedings known as Kilgoris PMC ELC Case No 19 of 2018 which were determined by the Judgement pronounced on the 29/05/2020.

35. The Applicant's attempt to have the said judgement pronounced on the 29/05/2020 in Kilgoris PMC ELC Case No 19 of 2018 set aside and/or vacated through this Appeal has not been successful.

36. In essence therefore, the judgement pronounced on the 29/05/2020 in the proceedings known as Kilgoris PMC ELC Case No 19 of 2018 determined with finality all the issues between the parties and there is no other issue for determination.

37. In this regard, a proceeding which has dealt with an issue in finality cannot be consolidated with another issue that has not been finalised.

38. For consolidation to be allowed, both proceedings must be still pending before Courts of competent jurisdictions capable of being handled by one judicial officer.

39. In this present proceeding, an Appeal in the superior Court cannot be consolidated with a proceeding in the Lower Court which is still pending.

40. In essence therefore, this particular prayer by the Applicant is also not merited as prayed.

Issue No 3- Who bears the costs of this application?

41. The last issue for determination is who should bear the costs of the present Application.

42. The costs of any proceeding usually follow the outcome of the said proceeding.

43. In this instant case, the Applicant has not been successful in the two prayers he sought in the present Application.

44. Consequently therefore, the costs of the present Application shall be borne by the Applicant.

Conclusion.

45. In the Notice of Motion application 2/06/2023 is hereby determined in the following manner; -

A. The notice of motion dated 2nd June 2023 be and is hereby dismissed.



B. The applicant to bear the costs of the said application.

**DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 14TH OF
DECEMBER 2023.**

EMMANUEL.M.WASHE

JUDGE

