



**Kaugi v Muchangi (Environment and Land Miscellaneous Application
E021 of 2022) [2025] KEELC 3666 (KLR) (24 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3666 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E021 OF 2022**

AK BOR, J

APRIL 24, 2025

BETWEEN

ROY ANTHONY MUGO KAUGI APPLICANT

AND

JACOB MUCHANGI RESPONDENT

RULING

1. The Applicant brought the application dated 19/8/2022, seeking to have the time enlarged for filing an appeal against the judgement and decree delivered on 17/4/2019 in Embu Civil Case No 67 of 2018. He also sought leave to file the appeal out of time on the basis that being aggrieved and dissatisfied by the decision of Honorable T. K Kwambai, he filed Embu High Court Civil Appeal No. 4 of 2020 which the High Court struck out on 20/7/2022 for lack of jurisdiction. The Applicant expressed the desire to pursue an appeal against the decision of the Learned Magistrate delivered in Embu CMCC 67 of 2018.
2. The application was supported by the affidavit sworn by Joe Kathungu, the Applicant's advocate, who produced copies of the proceedings and judgments given by the trial court and the High Court. He also explained the process through which he applied for copies of judgment and urged that the delay in filing the intended appeal was inadvertent and excusable because it was occasioned by factors beyond the Applicant's control since the High Court granted him leave to file the appeal at the time when the issue of jurisdiction had not arisen.
3. The Respondent swore the replying affidavit in opposition to the application and contended that the judgment sought to be appealed against was delivered 44 months ago and that the delay was inordinate. He maintained that the Applicant was represented by an advocate of high repute and that he should not be dragged back to litigation which was finalised more than 44 months ago. He added that the suit before the trial court was not a claim for land and that this court lacked jurisdiction to hear and determine the present application. He maintained that it was a money decree and that the Applicant



had been confusing issues yet the issue of the sale of the land only arose in the execution of the money decree. He annexed a copy of the decree together with the plaint and the affidavit sworn by the Applicant giving the background to the dispute. He added that in any event, the Applicant did not have a cause of action over the suit land known as Gaturi/Githimu/3XX0 since he had already sold it to Dr. Cyrus Njiru. He urged that Dr. Cyrus Njiru was in court over the suit property and had filed Embu High Court Civil Appeal 34 of 2022 and as well as another suit in the magistrate's court.

4. The court directed parties to file submissions which it has considered. The Applicant submitted that he believed that the matter was more of a civil nature than a land matter considering the prayers sought in the plaint which was why he filed the initial application for leave to file the appeal out of time before the High Court. The High Court heard that application and allowed it following which he filed Embu High Court Civil Appeal No. 4 of 2020 which was struck out on a technicality. The Applicant submitted that it was erroneous for the Respondent to argue that the Applicant had no recourse against him since he was paid the decretal sum upon the sale of the Applicant's land through public auction because if the intended appeal were to succeed, the sale of his land by public auction could be reversed on the appropriate orders made by the court. He urged that from the draft Memorandum of Appeal, it was clear that he had not sought any order as regards the suit property hence the issue of the land being sold to Dr. Cyrus Njiru did not arise. He explained that his appeal was against the Learned Magistrate's order in which he stated that the Applicant should refund all monies paid to him plus a penalty equivalent to 50% of the purchase price in line with clause 11 of the sale agreement. He maintained that the Learned Magistrate did not make any order regarding the suit land. He urged the court to grant the orders sought in the application.
5. The Respondent submitted that the Applicant filed a similar application in Embu High Court Miscellaneous Application No. 46 of 2019 which was struck out by the court. According to the Respondent the present application is res judicata pursuant to Section 7 of the *Civil Procedure Act*. The Respondent maintained that the application dated 19/8/2022 was a nullity having been birthed by a null appeal in Embu HCCA No. 4 of 2020. The Respondent cited various decisions in support of the position that a suit filed in a court without jurisdiction was a nullity in law. He urged that litigation must come to an end and that it was in the interest of justice for a party to be protected from facing repetitive litigation over the same matter.
6. The issue for determination is whether the court should enlarge the time for filing an appeal and allow the Applicant to lodge the appeal out of time. The Applicant's explanation for the delay in seeking leave to lodge an appeal against the decision of the Learned Magistrate delivered on 17/4/2019, is that he lodged an appeal in the High Court which was struck out for want of jurisdiction. Looking at the plaint filed in Embu CMCCC No. 67 of 2018, the genesis of this dispute is that the Applicant and the Respondent entered into an agreement on 28/4/2018 for the sale of the suit property at the agreed consideration of Kshs. 4, 000,000/=. The sale fell through and the defendant refunded the deposit of Kshs. 200,000/= on 6/4/2018. The reliefs sought in the plaint were general damages and a declaration that the Applicant breached the sale agreement dated 28/2/2018. In its determination, the Learned Magistrate allowed the prayers sought in the plaint after finding that the appellant breached the sale agreement when he went ahead to look for a buyer after declining to collect the balance of the purchase price.
7. The Applicant filed the application for leave to file the appeal out of time before the High Court and it was allowed on 21/1/2020 only for the appeal to be struck out vide the judgment of 20/7/2022 because the High Court found that the dominant factor in the case was land which fell within the jurisdiction of the Environment and Land Court. Although inordinate, the delay was therefore excusable. The



court is satisfied that it ought to exercise its discretion in favour of the Applicant and afford him a chance to pursue his appeal.

8. The court grants the Applicant leave to file an appeal out of time against the judgment delivered in Embu Civil Case No. 67 of 2018.

9. The costs of the application will abide the outcome of the appeal.

DELIVERED VIRTUALLY AT EMBU THIS 24TH DAY OF APRIL 2025.

**K. BOR
JUDGE**

