



Gitonga & 2 others v Murichu Ranching Co. Ltd & 7 others (Environment & Land Case 109 of 2016) [2022] KEELC 4910 (KLR) (12 May 2022) (Ruling)

Neutral citation: [2022] KEELC 4910 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 109 OF 2016**

**L WAITHAKA, J
MAY 12, 2022**

BETWEEN

**ROSE WANGARI GITONGA 1ST PLAINTIFF
PETER KARIUKI GITONGA 2ND PLAINTIFF
SIMON WANJOHI GITONGA 3RD PLAINTIFF**

AND

**MURICHU RANCHING CO. LTD 1ST DEFENDANT
ATTORNEY GENERAL 2ND DEFENDANT
JAMES MWANGI KAROKO 3RD DEFENDANT
SAMUEL NDUNG’U MBORA 4TH DEFENDANT
JOHN MBUGUA NYAMU 5TH DEFENDANT
MOSES GATIKU MUYAIRA 6TH DEFENDANT
JOSEPH WATENE MBUGUA 7TH DEFENDANT
PETER NGANGA MUKORA 8TH DEFENDANT**

RULING

Introduction

1. This ruling is in respect of the application dated December 1, 2017. The application was filed by the 1st and the 3rd to 8th defendant/applicants herein, hereinafter jointly referred to as the applicants.



2. Through the application, the applicants inter alia seek leave to file an appeal out of time against the ruling of the Deputy Registrar, Hon Nelly W Kariuki made on the June 5, 2017 and delivered on June 9, 2017.
3. The application is premised on the grounds that the ruling sought to be appealed from was delivered in the presence of the applicants but in the absence of the applicants' counsel; that the applicants were aggrieved by the ruling; that the applicants had challenges tracing their counsel to explain to them the meaning and import of the ruling and that by the time the applicants traced their counsel and got him to explain to them the meaning and import of the ruling, the time within which they ought to have appealed against the ruling had expired.
4. The applicants who are desirous of filing an appeal against the ruling are apprehensive that the substituted plaintiff/s/respondents may execute a decree issued in this suit rendering their intended appeal nugatory.
5. Pointing out that the dispute in this suit is in respect of land which is an emotive issue and explaining that if the decree issued in this suit is executed they may be rendered landless; the applicants urge the court to allow the application.
6. According to the applicants, allowing the application will not occasion any prejudice to the substituted plaintiffs/respondents.
7. The application is said to have been brought without inordinate delay.
8. The application is supported by the affidavit of Cyrus Gikonyo Wambugu, who has described himself as the Secretary of the 1st defendant/applicant, in which the grounds on the face of the application are reiterated.
9. The court record, proceedings of March 15, 2018, suggest that the respondents filed a response to the application. However, at the time of writing this ruling no such response was in the court record.
10. The issue of leave to appeal out of time being an issue of law, I have decided to proceed with the writing of the ruling, without the benefit of the responses filed by the respondents, if any.
11. Pursuant to the directions given on February 4, 2019 that the application shall be disposed of by way of written submissions, the parties filed submissions, which I have read and considered.

Analysis and determination.

12. The sole issue arising from the application and the submissions in respect thereof is whether the applicants have made a case for being allowed to file an appeal out of time.
13. Subject to the outcome of the issue in paragraph 12 above, whether the applicants have made a case for stay of proceedings pending appeal. There is also the issue of costs in respect of the application.
14. It is not in dispute that under Order 50 rule 6 of the *Civil Procedure Rules*, this court has power to enlarge time. The only issue in dispute is whether, in the circumstances of this case, the applicants have made up a case for enlargement of time. Concerning that issue, the applicants citing the alleged difficulty in reaching their advocate to explain to them the import of the ruling sought to be appealed from and the nature of the subject matter of the suit have submitted that they have made a good case for extension of the time within which they ought to have filed an appeal against the decision hereto.
15. The respondents are of a different view. According to the substituted plaintiffs/respondents, given that the applicants were in court when the impugned ruling was made, the explanation offered for delay in



tracing their advocate to explain to them the import of the ruling is said to be unsatisfactory. The delay of six months, in the circumstances of this case, where the applicants were merely 25 kilometers away from their counsel's office, is said to be grossly inordinate.

16. Based on the decision in the case of *Aviation Cargo Support Limited v St Mark Freight Services Limited* (2014) eKLR where a delay of over six months was found to be too inordinate and unexplained, the plaintiffs/respondents urge the court to find that the delay in applying for leave to file appeal in the circumstances of this case was inordinate and not properly accounted for.
17. Pointing out that the suit herein was filed in 2004 and judgment delivered in 2015, the plaintiffs/respondents have submitted that they will suffer prejudice if the application is allowed.
18. According to the plaintiffs/respondents, the intended appeal has minimal chances of succeeding.
19. Terming the authorities cited by the applicants in support of the application distinguishable, the plaintiffs/respondents have submitted that the intended appeal is aimed at frustrating the execution of the judgment issued in this matter, which judgment has not been appealed from, and urged the court to dismiss it with costs.
20. In his submissions, the 2nd defendant/respondent, has termed the delay in filing the application herein grossly inordinate, the reasons given for the delay unsatisfactory and the chances of success of the appeal minimal.
21. Arguing that the intended appeal is aimed at frustrating a judgment of this court, the 2nd defendant/respondent urges the court to dismiss it with costs.
22. I have carefully considered the circumstances leading to filing of the instant application, the explanation offered for delay in filing an appeal within the time stipulated by law and the explanation offered for the delay in filing the application for leave to file an appeal out of time.
23. Taking into account that the ruling sought to be appealed from was delivered in the presence of the applicants and that the applicants' counsel had an advocate holding his brief when the ruling was delivered; and further taking into account that the applicants were not living far away from their advocate so as to be able to say that they could not physically reach their advocate for explanation of the ruling; and further taking into account that the applicants have not bothered to reveal to the court when they ultimately reached their advocate, got the ruling explained to them and gave the instructions for the appeal, I agree with the submissions by the respondents that, in the circumstances of this case, the delay of over six months is grossly inordinate and unexplained.
24. I am also of the view that allowing the application in the circumstances of this case, where the judgment issued in favour of the plaintiffs, way back in 2015 has not been appealed from, would be prejudicial to the plaintiffs/respondents.
25. The upshot of the foregoing is that the application dated December 1, 2017 has no merits. Consequently, I dismiss it with costs to the respondents.
26. Orders accordingly.

DATED AND SIGNED AT ITEN THIS 25TH DAY OF APRIL, 2022.

L. N. WAITHAKA

JUDGE

READ, SIGNED AND DELIVERED AT NYERI THIS 12TH DAY OF MAY, 2022.



J. O OLOLA
JUDGE

