



**Kiprono v Kenya Marine & Fisheries Research Institute (Environment & Land
Miscellaneous Case E035 of 2021) [2022] KEELC 2959 (KLR) (12 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 2959 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND MISCELLANEOUS CASE E035 OF 2021**

EO OBAGA, J

MAY 12, 2022

BETWEEN

ADIJA CHAUSIKU KIPRONO PLAINTIFF

AND

KENYA MARINE & FISHERIES RESEARCH INSTITUTE DEFENDANT

RULING

1. This is a ruling in respect of a Notice of motion dated 23rd September, 2021 in which the Applicant seeks extension of time within which to file an appeal against an interlocutory ruling delivered on 22nd July, 2021. The Applicant had been occupying part of land held by the Respondent for over five decades. On 24th August 2020, the Respondent issued the Applicant with a notice to vacate the land.
2. The Applicant moved to Kabarnet SPM's Court where she filed a suit against the Respondent. She also filed an application for interlocutory injunction to last until the application was heard and finalized. The Applicant obtained injunctive orders which were to last until the hearing of the application inter-partes. The application was finally heard inter-partes and a ruling dismissing the same with no order as to costs was delivered on 22nd July, 2021.
3. It would appear that the only prayer in the plaint was for an injunction which was to last until the application was heard and determined. Consequently, the trial magistrate made an order directing the Respondent to give her six months to vacate the land.
4. The Applicant's counsel contends that he was not aware of the court's ruling until August 2021. The counsel states that he had sent an advocate to hold his brief and take the ruling but that the Advocate did not do so. The Advocate did not still file an appeal as he thought that he had six months to do so.
5. The Applicant contends that mistakes of her counsel should not be visited upon her and that she has an appeal with high chances of success as the trial magistrate made final orders without hearing her case.



6. The Respondent did not file a replying affidavit or written submissions. I have considered the Applicant's application as well as her submissions. The only issue for determination is whether this court should extend time for filing an appeal against the ruling of the trial magistrate. The principles for grant of extension of time to file an appeal out of time have been well settled. In the case of *James Herberts Odhiambo -vs- Far East Chines Medical Centre and another* (2002) eKLR, It was stated as follows:-

“it is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this court takes into account in deciding whether to grant an extension of time are: firstly, the length of the delay; secondly, the reason for the delay; thirdly, (possibly), the chances of the appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the respondent if the application is granted.”

7. In the instant case, the Applicant's Advocate did not go to court during the time of delivery of ruling. When the advocate later learnt of the ruling, he did not bother to file an appeal against the impugned ruling. The reason given is that the Advocate was under the impression that he had six months within which to appeal. This cannot be true as the six months were given to the Applicant to allow her to relocate from the Respondent's land. The Applicants counsel knew that appeals from the subordinate courts should be filed within 30 days.

8. In asking the Respondent to give the Applicant six months to re-locate, the trial magistrate saw that there was nothing which was to go for hearing, the court having observed that the prayer in the plaint as well as the application for injunction was expressed to last until the hearing of the application interpartes. The magistrate cannot therefore be faulted for having ordered the Respondent to give the Applicant 6 months to vacate.

9. The Respondent is a Government Institution. The Applicant would not have acquired the land by way of prescription. She had no allotment. Hearing of the main suit would have been a waste of time. A party can only be given an opportunity to be heard when there is something to hear. I therefore find no merit in the Applicant's application which is dismissed with no order as to costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 12TH DAY OF MAY, 2022.

E. OBAGA

JUDGE

In the virtual presence of;

M/s Cheruiyot for Respondent.

Court Assistant -Albert

E. OBAGA

JUDGE

12TH MAY, 2022

