



**Gatuna & another (Legal Representative of the Estate of the late
STEPHEN KIBARA GITAU) v Mepukori (Environment and Land Appeal
E017 of 2022) [2022] KEELC 2220 (KLR) (30 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 2220 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND APPEAL E017 OF 2022**

**MN GICHERU, J
JUNE 30, 2022**

BETWEEN

JAMES GATUNA 1ST APPLICANT

MUMBI KIBARA 2ND APPLICANT

**LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE STEPHEN
KIBARA GITAU**

AND

WINFRED MEPUKORI DEFENDANT

RULING

1. This ruling is on the Notice of Motion dated 10th March, 2022. It is brought under Sections 79G and 95 of the *Civil Procedure Act*, Order 42, Rule 6(1) and (6), Order 50, Rule 6 of the *Civil Procedure Rules* and all other enabling provisions of law.

The motion seeks the following orders;

- (i) Leave to appeal out of time against the ruling and orders of Hon. Becky Cheloti Mulemia (SRM) delivered on 25th January, 2022.
 - (ii) Stay of proceedings in MCELC Case No. E024 of 2011 pending the hearing and determination of the Applicant's appeal filed in the High Court.
 - (iii) That the Notice of Appeal and Memorandum of Appeal annexed hereto be deemed as duly filed and served.
 - (iv) Costs of the application be provided for.
2. The Notice of Motion is supported by five grounds, supporting affidavit and two annexures.



The gist of the above material is that the Applicant is aggrieved by the dismissal of her application dated 25th October, 2021 in Case No. E021/2021 pending in the lower Court.

The dismissal happened on 25th January, 2022. The Notice of Appeal was filed on 11th March, 2022 which is outside the period allowed by law. The Applicant applied for a certified copy of proceedings and ruling dated 25th January, 2022 but they are yet to be supplied by the Executive Officer at the Lower Court.

The dismissal of the Applicant's application has caused extreme prejudice to her and she prays the same be reversed.

3. I have carefully considered the application in its entirety including the affidavits, grounds in support as well as the supporting affidavit. I have also considered Memorandum of Appeal.

I do not find sufficient material placed before me to grant any of the prayers sought. As at now, I do not know what the prayers in the dismissed application were. I do not know why they were not allowed. I do not know what the implication of my allowing any of the prayers will be.

Without all the missing links, my granting any of the prayers may occasion a miscarriage of justice. Since the matter is not yet concluded in the Lower Court, all is not lost to the applicant.

She will have another chance to appeal if the suit is finally decided against the party on whose side she is. For now, I disallow the application dated 10th March, 2022.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 30TH DAY OF JUNE, 2022.

M.N. GICHERU

JUDGE

