



**M'ethuru v Kamwiti & 2 others (Miscellaneous Civil Application
E001 of 2022) [2022] KEELC 3356 (KLR) (27 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 3356 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
MISCELLANEOUS CIVIL APPLICATION E001 OF 2022**

**CK NZILI, J
JULY 27, 2022**

BETWEEN

M'ITUMBIRE M'ETHURU APPLICANT

AND

JOHN GITUMA KAMWITI 1ST RESPONDENT

DISTRICT LAND REGISTRAR, MERU NORTH 2ND RESPONDENT

ATTORNEY GENERAL 3RD RESPONDENT

RULING

1. The court is asked to extend time within which to lodge an appeal against the ruling made on August 19, 2021 in Tigania PMCC No. 25 of 2017. The application is supported by an affidavit sworn on January 20, 2022 by M'Itumbiri M'Ethuru. The reasons given are that out of an advanced age and Covid 19 pandemic, the applicant was out of touch with his lawyers then on record and was only able to visit the court on January 14, 2022 when he learned his suit was struck out on August 19, 2021. Further the applicant avers his erstwhile lawyers also told him that they were not aware of the ruling.
2. Additionally, the applicant avers that the ruling was delivered in the absence of the parties and without notice. He states the appeal has high chances of success otherwise he will be condemned unheard.
3. The application is opposed through a replying affidavit sworn on March 2, 2022 by John Gituma Kamwiti.
4. The grounds given are that both parties were given an opportunity to submit on the jurisdiction of the court, the applicant knew of this but failed to make a follow up, the delay is long and the reason(s) thereof are not convincing. Further, the 1st respondent avers he acquired the land lawfully and shall be prejudiced by the orders sought.



5. Additionally, the 1st respondents avers he is sickly, old, the applicant wants to illegally take away his land and endlessly drag him to court.
6. In *Nicholas Arap Korir Salat v IEBC* (2014) eKLR, the Supreme Court of Kenya held an extension of time to appeal out of time is not as a matter of right to a party but is a discretionary power of the court. The parameters to guide the court in exercising that discretionary is the length of the delay, explanation for the delay to the satisfaction of the court, the prejudice likely to be occasioned to the opposite party and whether it is in public interest to extend time.
7. In this application, the order sought to be appealed against was made on August 19, 2021 whereas this application was made on January 21, 2022. The delay is close to four months. The explanation for the delay is the lack of knowledge by the applicant's erstwhile advocates, covid 19 and sickness on the part of the applicant. Further, the applicant urges the court to find mistakes of his former advocates should not be visited upon him.
8. On the other hand, the 1st respondent avers each party was given an opportunity to address the trial court on the issue of jurisdiction on January 28, 2021 and hence he should have followed up with the court to know the outcome. Again, the 1st respondent maintains he will be prejudiced if the application is allowed for he legally and or lawfully owns the suit land and should not be endlessly dragged into court.
9. To counter this, the applicant urged the court to find the appeal arguable going by the draft memorandum of appeal attached to the application and to avoid being condemned unheard.
10. While exercising the discretion as to whether to extend time or not the court is expected to be guided by the rules of fairness and justice and not personal whims or emotions.
11. Looking at the impugned ruling, the trial court appears to have declined jurisdiction on account of the provisions of the *Land Adjudication Act* and the *Land Consolidation Act*. The plaint dated June 30, 2017 and the defence dated February 11, 2019 relate to L.R No's. Tigania/Thananga/89 and 95. The 2nd respondent was the District Land Registrar. The pleadings refer to an alleged fraud in the subdivision of the suit land and the prayers sought were for the revocation of title deed and amalgamation. The 1st respondent counter-claim refers to L.R No. Tigania/Thananga/89 and sought for injunction on account of trespass to a registered land.
12. In my considered view the intended appeal raises arguable points of law as to whether the trial court misdirected itself on the applicable law(s). The prejudice likely to be suffered by the applicant appears higher compared to the respondents particularly for being driven out of the seat of justice without being accorded a fair hearing and his rights to access to justice.
13. The delay cannot also be termed as inordinate and the explanation unreasonable.
14. In the premises I allow the application with no order as to costs. The appeal shall be filed within 14 days from the date hereof.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 27TH DAY OF JULY, 2022

In presence of:

C/A: Kananu

Bwonoga for applicant

Gikunda Anampiu for respondent



HON. C.K. NZILI

ELC JUDGE

