



**Ministry of Lands and Physical Planning & 2 others v Benson (Suing on behalf of the Estate of Benson Mbuuri alias Benson M’Buuri M’Ncebere alias Kathakai Benson M’Buuri – Deceased) & another (Miscellaneous Application E022 of 2022) [2022] KEELC 2448 (KLR) (18 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 2448 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
MISCELLANEOUS APPLICATION E022 OF 2022**

**CK NZILI, J**

**JULY 18, 2022**

**BETWEEN**

**MINISTRY OF LANDS AND PHYSICAL PLANNING ..... 1<sup>ST</sup> APPELLANT  
LAND ADJUDICATION & SETTLEMENT OFFICER RUIRI/  
RWARERA, IMENTI NORTH AND SOUTH, CENTRAL IMENTI &  
BUURI ..... 2<sup>ND</sup> APPELLANT  
ATTORNEY GENERAL ..... 3<sup>RD</sup> APPELLANT**

**AND**

**LYDIA KANARIO BENSON (SUING ON BEHALF OF THE ESTATE  
OF BENSON MBUURI ALIAS BENSON M’BUURI M’NCEBERE ALIAS  
KATHAKAI BENSON M’BUURI – DECEASED) ..... 1<sup>ST</sup> RESPONDENT  
M’MWORIA M’MUKANGU ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The court is asked to stay proceedings at the lower court and specifically the judgment scheduled for 19<sup>th</sup> July 2022 on the basis that the applicants intend to appeal against the order made on 7<sup>th</sup> June 2022. The application is based on the grounds at the face of the application and the affidavit sworn on 8.7.2022 by Mbaikyatta Darlive.
2. The reasons given are that an adjournment was sought and denied, the matter proceeded ex parte, there were good reasons for seeking adjournment; mistakes of counsel should not be visited upon innocent parties, that the intended appeal has arguable points and that a party should not be driven from the seat of justice unheard.



3. The application is opposed through a replying affidavit sworn by Lydia Kanario on 15.7.2022 and on the grounds that it is an abuse of the court process to seek such orders; it is a violation of Order 43 Rule (2) & (3) *Civil Procedure Rules*, it is filed late to frustrate the finalizing of the suit, that no good reasons are given why there has been inordinate delay and lastly for reasons that the trial court gave the applicants adequate opportunity and time to participate in the suit.
4. The principles to apply in considering an application for stay of proceedings and leave to appeal out of time were considered in *Nicholas Kiptoo Arap Salat vs IEBC* (2015) eKLR and *Kenya Wildlife Services vs James Mutembei* (2019) eKLR.
5. On the 1<sup>st</sup> issue the Supreme Court of Kenya held that leave to extend time is not a matter of right but a discretionary power to be exercised by the court not based on emotions, ill will and or in a capricious manner but is aimed at ensuring justice and fairness while considering the rights of both the applicant and the respondent public interest, prejudice and if there are sufficient reasons for the delay.
6. In this matter the applicants blame the delay in filing the appeal on not getting the ruling on time. The applicants have not attached a request letter for the ruling dated 7.6.2022. There is no indication if there was a follow up letter made. The date of the supply of the ruling attached to the application is not indicated. The applicants state they were waiting for a certified copy of the ruling but have not clarified when it was requested for.
7. That notwithstanding, the court must also consider if the intended appeal raises arguable points and if it is in the interest of justice to allow the application.
8. At issue in this application is whether the applicants were condemned unheard and if mistakes of their advocates on record can be visited upon them. It is averred the parties were in court ready to proceed but the lawyers on record were absent for reasons of bereavement and or indisposition.
9. The right to be heard and to access to justice is so sacrosanct that cannot be gainsaid.
10. The same case applies to the right to expeditions disposal of suits which must also be weighed against the freedom to exercise a right to appeal.
11. As held in *Kenya Wildlife Services vs James Mutembei* (supra), the court in staying proceedings is also looking into the manner in which it is likely to impair the right to access to justice and a right of fair trial.
12. Applying the above principle in these two competing rights, I find that there will be more prejudice to the applicants if the judgment is delivered before they exercise their right of appeal. The respondents may be compensated with costs for any delay unlike the applicants who are likely to be condemned unheard, both before the trial court and the appellate stage.
13. In the premises I stay the proceedings for a period of 30 days during which time the applicants will file and serve the memorandum of appeal within 7 days and fastrack the hearing of the intended appeal.
14. Costs of Kshs.7,000 to the respondents for this application.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT**

**THIS 18<sup>TH</sup> DAY OF JULY, 2022**

**In presence of:**

C/A: Kananu



Mr. Kieti for applicant

Thangicia for respondent

**HON. C.K. NZILI**

**ELC JUDGE**

