



REPUBLIC OF KENYA



KENYA LAW
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**Anyanga v Oyuga (Environment and Land Appeal 69 of 2021)
[2022] KEELC 2598 (KLR) (13 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 2598 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND APPEAL 69 OF 2021
A OMBWAYO, J
JULY 13, 2022**

BETWEEN

SAMUEL ODONGO ANYANGA APPELLANT

AND

WINNIE ACHIENG OYUGA RESPONDENT

(Being an appeal from the Judgment/decree of the Hon. Chief Magistrate H.M. Nyaberi in (Winam CMCC ELC Case No. 14 of 2018 Winnie Achieng Oyuga vrs Samuel Odongo Anyanga) delivered on the 22nd day of September 2021))

RULING

1. Samuel Odongo Anyanga (hereinafter referred to as applicant) has come to this court against Winnie Achieng Oyuga (hereinafter referred to the Respondent for orders that Pending the hearing and determination of this application this honorable court be pleased to stay execution of the of the decree issued in Winam CMCC ELC Case No. 14 of 2018. That this honorable court be pleased to grant leave to the plaintiff/Applicant to file and serve its notice of Appeal out of time, challenging the ruling of this Honorable court dated May 6, 2022 and the notice of appeal filed on May 24, 2022 and signed by the deputy registrar on May 27, 2022 be deemed properly filed. That Leave be granted to the applicant to serve the notice of appeal out of time within a period specified by this honourable court. The costs of this application be in the cause.
2. The application is based on grounds that the plaintiff/Applicant was not aware of the adverse ruling had been made against him on 6/5/2022 and the same was not sent to his advocate by email as is the normal practice.
3. The appellant became aware of the said ruling on May 23, 2022, by which time 14 days provided for filing of the notice of appeal had lapsed but all the same proceeded to file his notice of appeal as against the ruling dated 6/5/2022.



4. The time within which the appellant/applicant could lodge his appeal against the said decision had lapsed by the said date, and being aggrieved by the said decision he has to seek leave to extend time within which the notice of appeal so filed be deemed properly filed, and time extended to serve the same upon the respondents advocate.
5. There is real and grave danger being that the respondent will move in to enforce the decree by demolishing the appellants buildings in a suit where there are two distinct and clear surveyors reports. The county surveyor clearly states that there is no trespass, while the respondent private surveyor states that there is trespass.
6. The Respondents will not be prejudiced in any manner should this application be allowed. The applicant has an arguable appeal with high chances of success. This application has been made timeously and in good faith. Being aggrieved by the said decision, it would be prudent to allow the orders sought to enable the applicant ventilate his appeal. Equity favours granting of the orders sought.
7. The application is supported by the affidavit of Samuel Odongo Anyanga.
The application was served but there is no response.
8. When the matter came for hearing there was no attendance by the respondent. I do find that the applicant has satisfied this court that he was not aware of the adverse ruling delivered against him on 6/5/2022. I do grant the applicant leave to file and serve notice of Appeal out of time challenging the ruling dated 6/5/2022. The notice of Appeal on record is hereby deemed as duly on record. The record of appeal is equally deemed as duly filed and admitted.
9. On the issue of stay pending appeal, I decline to grant the same as it will be a review of the ruling dated 6/5/2022 and therefore the application for stay pending appeal is not allowed.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 13TH DAY OF JULY, 2022.

ANTONY OMBWAYO

JUDGE

