



REPUBLIC OF KENYA



**KENYA LAW**  
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**Gichina v Njore & 3 others (Environment & Land Case 116 of 2021)  
[2022] KEELC 4919 (KLR) (21 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 4919 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE 116 OF 2021  
BM EBOSO, J  
SEPTEMBER 21, 2022**

**BETWEEN**

**DAVID GICHINA ..... PLAINTIFF**

**AND**

**CHARLES MWANGI NJORE ..... 1<sup>ST</sup> RESPONDENT**

**ANN WAMBUI MWANGI ..... 2<sup>ND</sup> RESPONDENT**

**WAMAITHA KIRAGU KAGUNYO ..... 3<sup>RD</sup> RESPONDENT**

**GICHINA (DECEASED ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. The applicant, David Gichina, moved this court through a notice of motion dated December 22, 2021 seeking orders: (i) extending the time within which to file a notice of appeal and a memorandum of appeal against the judgment rendered in Gatundu PMC Civil Case No 253 of 2019; (ii) admitting the notice of appeal and memorandum of appeal already filed herein; (iii) staying execution of the above judgment pending the hearing and determination of the appeal; and (iv) admitting for consideration new compelling material evidence. The said application is the subject of this ruling.
2. The application was supported by the applicant's affidavit sworn on December 23, 2021. It was canvassed through written submissions dated July 5, 2022, filed through M/s Majau Maitethya & Associates.
3. The case of the applicant is that he was not aware of the suit in the trial. He contends that he was not served with summons or pleadings, hence he did not participate in the suit in the trial court. He learnt about the case and the judgment of the trial court when he was served with an eviction notice by the Officer Commanding Kamwangi Police Station.



4. The 2nd respondent opposed the application through her replying affidavit sworn on May 19, 2022 and written submissions dated July 19, 2022, filed through M/s Wangui Kuria & Company Advocates. The case of the 2nd respondent is that the application is unmerited and should be rejected.
5. I have considered the gist of the application under consideration. I will first consider a jurisdictional issue in this application. The applicant contends that he was not served with summons to enter appearance in the trial court. As a consequence, the suit in the trial court proceeded in his absence. He is aggrieved by the fact that he was not served with summons. He is, in essence, alleging that the judgment of the trial was an irregular ex parte judgement. He wants this court to extend time for him to lodge an appeal against the alleged irregular ex-parte judgement. The memorandum of appeal which he annexed to the application refers to a ruling rendered on April 7, 2021. No such ruling was exhibited. What was annexed to the application is a judgment rendered on 7/4/2021 by Hon H M Ng'ang'a in Gatundu CMC Case No 253 of 2019.
6. My understanding of the framework in the *Civil Procedure Rules* and our guiding principles is that the first port of call by a party seeking to set aside an irregular ex-parte or irregular default judgment is the court that rendered or entered the irregular judgment. The appellate court is seized of jurisdiction in that endeavor only after the trial court has rendered a determination on the plea for an order setting aside the irregular ex parte or default judgment. Put differently, the applicant ought to first move the trial court and let the trial court render a ruling on his plea for an order setting aside the alleged irregular ex parte judgment. An appeal would then lie to this court against the ruling of the trial court on the plea for an order setting aside the alleged irregular ex parte judgement.
7. The result is that it is the finding of this court that the contemplated appeal to this court is premature. It is also the finding of this court that the application under consideration is misconceived. I will strike it out without venturing into issues relating to merits of the plea. The applicant will bear costs of the application. Those are the orders of this court.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 21ST DAY OF SEPTEMBER, 2022**

**B M EBOSO (MR)**

**JUDGE**

**In the Presence of: -**

Mr Gitonga for the Applicant

Ms Ng'ang'a for the 2nd Respondent

Court Assistant: Sydney

