



REPUBLIC OF KENYA



**KENYA LAW**  
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**Muchiri v Wanjiku; Waweru & another (Proposed Interested Parties) (Environment and Land Appeal E065 of 2022) [2022] KEELC 14492 (KLR) (31 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 14492 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND APPEAL E065 OF 2022**

**JG KEMEI, J**

**OCTOBER 31, 2022**

**BETWEEN**

**SAMUEL MUNGAI MUCHIRI ..... APPELLANT**

**AND**

**BEATRICE NINI WANJIKU ..... RESPONDENT**

**AND**

**ANN MUTHONI WAWERU ..... PROPOSED INTERESTED PARTY**

**KAMAE RESETTLEMENT PROJECT ..... PROPOSED INTERESTED PARTY**

**RULING**

1. The Applicant filed this application on the 27/7/2022 seeking the following orders;
  - a. Spent
  - b. The Court be pleased to enjoin Ann Muthoni Waweru as the 1<sup>st</sup> Interested Party and Kamae Resettlement Project as the 2<sup>nd</sup> Interested Party respectively to the proceedings.
  - c. That the appeal be and is hereby deemed to have been file in time owing to the same having been filed prior and on before Hon Lady Justice L Komingoi who opined that the subject property falls within the jurisdiction of the ELC Thika and not Nairobi as filed hence our refile before the ELC Thika.
  - d. The Court be pleased to issue an order of stay of execution of the judgment emanating from Ruiru SPMCC No 336 of 2021 dated the 28/1/2022 pending the hearing and determination of the hearing and determination of the appeal.
  - e. Costs of the application.



2. The application is anchored on the grounds annexed thereto and the supporting affidavit sworn by the Applicant dated the 19/7/2022. The deponent states that she is the registered owner of the suit land having acquired the same vide an agreement dated the 15/7/2021 at the sum of Kshs 2 Million. That the 2<sup>nd</sup> Interested Party being the parent company of the large settlement property issued land ownership certificates to bonafide purchasers. That upon full payment she was issued with ownership certificate No 225 on the December 28, 2021. That on the 4/2/2022 a copy of the decree was posted on the gate of the plot stating that the plot was to be transferred to the plaintiff/Respondent. That she was excluded from the proceedings in the trial Court and hence was not afforded the opportunity to make her representations. She is apprehensive that her property may be disposed unlawfully unless the Court comes to her aid.
3. The application is opposed by the 1<sup>st</sup> Respondent *vide* grounds of opposition filed on the 30/9/2022 in the following grounds;
  - a. That the applicant was not a party in the lower court suit against which the appeal is against and the Applicant cannot seek joinder at the appeal stage.
  - b. The application is filed out of time.
  - c. The application is frivolous, bad in law incurably defective and an abuse of the process of the law.
4. On the 5/10/2022 parties elected to canvass the application by way of written submissions. On behalf of the applicant the firm of Ndungo James Gachiri filed written submissions while on behalf of the 1<sup>st</sup> Respondent the submissions were filed by the firm of Mbiyu Kamau & Co. Advocates.
5. I have read and considered the written submissions and in my view the issues for determination are; whether the appeal was filed out of time; whether the Applicants should be enjoined on the appeal; whether the Court should grant stay of execution; costs of the application
6. Section 79G of the *Civil Procedure Act* states as follows;
 

“Every appeal from a subordinate Court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower Court may certify as having been requisite for the preparation and delivery to the Appellant of a copy of the decree or order:

Provided that an appeal may be admitted out of time if the appellant satisfies the Court that he had good and sufficient cause for not filing the appeal in time.”
7. It is the law that any party wishing to file an appeal must do so within a period of 30 days from the date of the decree appealed from. The law also provides for filing of an appeal out of time if the Applicant satisfies the Court that he had good and sufficient cause for not filing the appeal in time.
8. The guiding principles in extension of time were given in the case of *Nicholas Kiptoo Arap Korir Salat versus Independent Electoral and Boundaries Commission & 7 others* (2014) eKLR where the apex Court stated;
  - “(1) Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court.
  - (2) A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the Court.



- (3) Whether the Court should exercise the discretion to extend time, is a consideration to be made on a case to case basis.
  - (4) Whether there is reasonable reason for the delay. The delay should be explained to the satisfaction of the court.
  - (5) Whether there will be any prejudice suffered by the Respondent of the extension is granted.
  - (6) Whether the application has been brought without undue delay; and
  - (7) Whether uncertain cases, like election petition, public interests should be a consideration for extending time.”
9. The applicant has not explained the reason for filing the appeal out of time save to what is alluded to in the main motion that the appeal had earlier been filed before another Court that redirected the appeal to this Court. Interalia none of the proceedings if any were placed before the Court to show that the appeal had been filed within time only before the wrong forum.
  10. The subject decree was issued on the 2/2/2022 and the appeal was filed on the 26/7/2022, about 5 months 20 days later. It is the explanation that unlocks the Courts discretion to extent time but absent any good and sufficient explanation, the Court cannot exercise discretion in a vacuum or in a whimsical sense.
  11. In the absence of leave to file the appeal out of time, it is my finding that there is no competent appeal filed before this Court. I also find that it is unnecessary to consider the issues framed for determination in the circumstances. In the upshot the application and the appeal be and are hereby struck out.
  12. The 1<sup>st</sup> Respondent shall have the costs of the application.
  13. Orders accordingly.

**DELIVERED, DATED AND SIGNED AT THIKA THIS 31<sup>ST</sup> DAY OF OCTOBER, 2022 VIA MICROSOFT TEAMS.**

**J G KEMEI**

**JUDGE**

**Delivered online in the presence of;**

Ms. Njoroge for 1<sup>st</sup> Respondent

Ndungu for 1<sup>st</sup> Applicant

2<sup>nd</sup> Respondent – Absent

Court Assistant – Dominic

