



REPUBLIC OF KENYA



KENYA LAW
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**Delfin v Karaine (Environment & Land Case 67 of 1998)
[2022] KEELC 13831 (KLR) (26 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13831 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE 67 OF 1998**

CK NZILI, J

OCTOBER 26, 2022

BETWEEN

ESTHER KATHAMBI DELFIN PLAINTIFF

AND

M'IBEERE KARAINA DEFENDANT

RULING

1. The application dated 20.6.2022 seeks court leave to extend the existing orders of the maintenance of status quo for a period of 6 more months. The reasons as contained in the supporting affidavit of Esther Kathambi Delfin sworn on the even date. The applicant states there has been inordinate delay in being supplied with certified typed copies of the proceedings by the Deputy Registrar of the court. The applicant averred she made a request for the typed proceedings by a letter dated 5.10.2021, made payments on 17.11.2021 but unfortunately the same are yet to be supplied making it difficult for her appeal to be processed.
2. The applicant therefore urged the court to find the delay has been without fault on her part. She prayed for an extra six months' time, an order for maintenance of status quo and to file and serve the record of appeal.
3. The application is opposed through a replying affidavit sworn by M'Ibeere Karaine on 13.7.2022. It is said the consent order of stay expired on 23.6.2022; the application is an abuse of the court process; the applicant is not keen to prosecute her appeal and is out to waste the courts time. That she is indolent and not serious. That it is not the work of the court to assist an indolent party, the title deed should be released for execution, the court is functus officio; annexure EKD "5" is an afterthought and lastly the court should not be blamed for lack of seriousness and the indolence of the applicant.
4. Reliance was placed on *ICEA Lion General Insurance Co. Ltd vs Julius Nyaga Chomba* (2020) eKLR and *Jane Nambuye Manyonge vs Republic* (2021) eKLR on the doctrine of finality.



5. It is not in dispute that by a ruling dated 20.12.2021 the court gave a conditional order of status quo that the original title deed be deposited in court with no more dealings occurring on the suit land for a period six months.
6. The applicant complied with the said orders by depositing the original title deed before court. She now complains that the six months are over, the proceedings are yet to be typed and supplied to her so as to prepare the record of appeal. She blames the delay on the court registry.
7. The respondent submitted that the court is functus officio and that the application is an abuse of the court process. He also blames the applicant for the indolence.
8. There is no doubt that under Sections 1A, 1B & 3A of the *Civil Procedure Act*, the court's overriding objective is the disposal of matters in a just, fair and orderly and timely manner.
9. The six months have lapsed and for a fact, the typing of proceedings is yet to be completed. The blame cannot be visited upon the applicant. All what was expected of her was to pay for the typed proceedings which she did. She cannot be blamed for something beyond her control.
10. It would also be unjust to deny the applicant one more chance in order to facilitate her to prefer her appeal. The title deed is still under the custody of the court and hence there would be no prejudice to the respondent of the orders sought are granted. See *Kwacha Group of Companies vs Pindoria Holdings Ltd* (2021) eKLR.
11. I therefore, find the application with merits. The orders of status quo as well as the terms thereof are hereby extended for another six months from the date hereof.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 26TH DAY OF OCTOBER, 2022

In presence of:

C/A: Kananu

Mr. Karuti for plaintiff/applicant

Okemwa for Abuor for respondent

HON. C.K. NZILI

ELC JUDGE

