



**Mwangi v Gathogoh & 6 others (Miscellaneous Application  
8 of 2022) [2022] KEELC 14843 (KLR) (16 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 14843 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
MISCELLANEOUS APPLICATION 8 OF 2022**

**BM EBOSO, J  
NOVEMBER 16, 2022**

**BETWEEN**

**WAMBUI MWANGI ..... APPLICANT**

**AND**

**JOHN KOIHI GATHOGO ..... 1<sup>ST</sup> RESPONDENT**

**SUSAN SHIRLEY GATHONI MURIITHI ..... 2<sup>ND</sup> RESPONDENT**

**UIGUANO WA KIRERE SAVINGS COOPERATIVE SOCIETY  
LIMITED ..... 3<sup>RD</sup> RESPONDENT**

**LAND REGISTRAR RUIRU ..... 4<sup>TH</sup> RESPONDENT**

**CHIEF LAND REGISTRAR, MINISTRY OF LAND AND PHYSICAL  
PLANNING ..... 5<sup>TH</sup> RESPONDENT**

**DIRECTOR OF SURVEY ..... 6<sup>TH</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 7<sup>TH</sup> RESPONDENT**

**RULING**

1. Through a plaint dated 21/10/2021, John Kiohi Gathongoh and Susan Shirley Gathoni Muriithi sued Wambui Mwangi [the applicant in the application under consideration] and five other in Ruiru SPMC E & L Case No 63 of 2020. Upon conclusion of trial, Hon. Agonda, Principal Magistrate, rendered a Judgment in the suit on 28/10/2021 in terms of the following verbatim orders:
  1. A declaration that the plaintiffs are the lawful proprietors of all that parcel land known as Ruiru/Ruiru West Block 3/1189 and Ruiru/Ruiru West Block 3/134 being one and the same suit property herein.



2. A permanent injunction restraining the 1st defendant by himself, servants, agents or assigns or otherwise howsoever from trespassing, disposing, selling, constructing or in any other manner whatsoever interfering with the plaintiff's quiet possession of all that parcel of land known as Ruiru/Ruiru West Block 3/1189.
  3. A mandatory injunction issued against the 1st defendant by herself, her agents, servants, employees and legal representatives from trespassing, disposing or, alienating, interfering with the plaintiffs' peaceful possession and occupation of suit property Ruiru/Ruiru West Block 3/1189.
  4. An order cancelling the title deed issued to the 1st defendant and that the title that was acquired by the 1st defendant was fraudulent, null and void.
  5. The 6th defendant to rectify the survey map to read the plaintiffs as the legal registered owner of Ruiru/Ruiru/ West Block 3/1189 and cancel survey map for Ruiru/Ruiru West Block 3/134 issued to 1st defendant.
  6. An order for the 3rd defendant to reconstruct and/or restore the original register for Ruiru/Ruiru/ West Block 3/1189 with the plaintiff as the 2nd registered owner after the Government of Kenya.
  7. The costs of the suit to the plaintiff to be paid by the 1st defendant.
2. On 31/1/2022, Wambui Mwangi brought an application dated 28/1/2022, seeking an order enlarging the time within which to lodge an appeal against the said Judgment. The said application, dated 28/1/2022, is the subject of this ruling. The application was supported by the applicant's affidavit sworn on 28/1/2022. It was canvassed through written submissions dated 1/2/2022, filed through M/s Mbuthia Kinyanjui & Co Advocates.
  3. The case of the applicant is that on 16/11/2021, she wrote to the Executive Officer of Ruiru Senior Principal Magistrate Court, requesting for a certified copy of the proceedings and Judgment. She needed to peruse the Judgment and the Proceedings so as to decide whether or not to appeal against the said Judgment. She was not provided with the said Proceedings and Judgment until 28/1/2022. At that point, the time for lodging an appeal had already lapsed.
  4. The 1st and 2nd respondents opposed the application through a replying affidavit sworn on 22/2/2022 by John Kiohi Gathongoh and written submissions dated 22/2/2022, filed by M/s Musyoki Mugaka & Co Advocates. His case is that the application is frivolous, vexatious and an abuse of the court process. He contends that the applicant's advocate ignored, refused, and /or neglected to attend court despite knowing that the case was coming up for Judgment. He further contends that Ruiru Law Court Registry has an efficient and impressive online engagement system, hence the applicant's allegations that there was delay on part of the Court Registry are untrue. He disputes the applicant's contention that she requested for a copy of the Judgment from the registry.
  5. I have considered the application, the response to the application, and the parties' respective submissions. Two questions fall for determination in the application. The first question is whether the applicant has satisfied the criteria upon which our courts exercise jurisdiction to enlarge time. The second question is whether there is a proper basis for granting of an order of stay of execution pending an appeal.



6. The criteria upon which our courts exercise jurisdiction to enlarge time within which to lodge an appeal are well settled. The criteria was summarized in the case of *Mutiso v Mwangi* [1997] KLR 630 as follows:

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that generally the matters which this court takes into account in deciding whether to grant an extension of time are; first, the length of delay; secondly, the reason for the delay; thirdly (possibly) the chances of appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the Respondent of the application is granted.”

7. The Supreme Court of Kenya outlined the following general criteria upon which jurisdiction to enlarge time is exercised in the case of *Nicholas Kiptoo Arap Korir Salat v The Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR as follows:

“This being the first case in which this Court is called upon to consider the principles for extension of time, we derive the following as the under-lying principles that a Court should consider in exercise of such discretion:

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 a 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 respondents if the extension is granted;
  6. Whether the application has been brought without undue delay; and
  7. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”
8. There is common ground that the Lower Court rendered its Judgment on 28/10/2021. Delivery of Judgment was preceded by a notice emailed to the parties’ advocates on 27/10/2021 at 4.27 p.m, notifying them that Judgment was to be delivered on 28/10/2021 at 8.30 am. The relevant coram indicates that there was representation on the part of the plaintiffs but there was no representation on the part of the defendants on 28/10/2021. The reason tendered by the applicant to justify the plea for enlargement of time is that he requested for copies of the Proceedings and the Judgment but the Court Registry did not avail them on time, hence he was not able to make a prompt decision on whether or not to appeal. The applicant contends that the delay was occasioned by online engagements with the Court Registry.
9. The court has considered the above explanation. The court appreciates that until early this year, court processes and operations were adversely affected by the COVID 19 Virus. A lot of court processes were handled online. There were attendant teething challenges. The court will, in the circumstances, grant the applicant a conditional order enlarging time for lodging an appeal. The condition is that



the applicant will pay the 1st and 2nd respondents throw-away costs of this application, assessed at Kshs 20,000 (Twenty Thousand) within 7 days. The said costs are to be remitted to the respondents' advocates within seven (7) days. Subject to compliance with the above condition, the period for lodging an appeal against the Judgment rendered in Ruiru SPMC E & L Case No 63 of 2020 on 28/10/2021 is enlarged by 7 days from today. In the event of non-remittance of the throw-away costs within seven (7) days, the order enlarging time will be deemed denied.

10. I have considered the applicant's plea for an order of stay of execution pending appeal. At this point, no appeal subsists. It would therefore be premature to grant the order of stay of execution in the absence of a subsisting appeal, taking into account the fact that there has been no stay order since the Judgment was rendered on 28/10/2021. The applicant will be at liberty to bring an appropriate application for stay once an appeal is filed, if necessary.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 16TH DAY OF NOVEMBER 2022**

**B M EBOSO**

**JUDGE**

**In the Presence of: -**

Ms Odhiambo for the Applicant

Mr Paul Muchiri for the 1st and 2nd Respondent

Court Assistant: Ms Osodo

