



**Langat & another v Langat (Environment and Land Miscellaneous Application
6 of 2020) [2022] KEELC 15298 (KLR) (8 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15298 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 6 OF 2020
MC OUNDO, J
DECEMBER 8, 2022**

BETWEEN

ANN LANGAT 1ST APPLICANT

CHEPKOSGEY TANGUS 2ND APPLICANT

AND

PETER MOMEN LANGAT RESPONDENT

RULING

1. Pursuant to a judgment delivered on the October 25, 2018 by the Magistrates' Court at Sotik in Sotik PMCC No 240 of 2014, the applicants have now filed the present application by way of a notice of motion dated August 5, 2020 brought under section 3, 3A, 65 of the *Civil Procedure Act*, order 50 rule 5, order 51 rule 1, 3, 3A (sic) and order 51(sic), *Civil Procedure Rules*, section 1A, 1B, 3A & 3 (sic) of the *Civil Procedure Act* and ad (sic) all enabling provisions of the law, where they seek for orders of stay of execution or further (sic) of the judgment and decree in Sotik PMCC No 240 of 2014, pending the hearing and determination of their application. The applicant s further seek leave to appeal out of time and are willing to provide security imposed by the court and/or abide by the terms of the court as it may deem fit.
2. The application is supported by the grounds therein as well as by the sworn affidavit of the 2nd applicant , of an equal date, and a supplementary affidavit dated June 22, 2022.
3. The applicant s' argument was that the impugned judgment was not delivered on the date in which it had been scheduled for delivering but rather, it had been subsequently delivered on another date and in their absence.
4. That it had been after the respondents had sought to execute, that the applicants had filed the present application. That the said judgment and decree has not been executed as the applicants were still in



possession of the subject parcels of land, as evidenced by the letters herein marked as annexure ‘PML2’ and ‘PML5’.

5. That leave to extend time for them to file an appeal out of time was discretionary and they sought that this discretion be considered in their favour so as to enable them challenge the decision of the trial court.
6. That there would be no prejudice suffered by the respondent if they were granted leave to file the appeal out of time as he was not in occupation of the disputed parcels of land.
7. That they had annexed their memorandum of appeal as “ct1” in their supplementary affidavit which showed that they had an arguable appeal. That an arguable appeal did not necessarily mean one that must succeed but rather, one that ought to be fully heard by the court.
8. That the extension of time was an equitable remedy to be granted to only a deserving party at the discretion of the court. That the admission on the part of the respondent of the occupation by the applicants, the fact that the honorable trial magistrate struck out agreements without proper evidence placed before him and the manner in which the judgment was delivered, were grounds enough to show that the discretion ought to be exercised in their favor.
9. That the delay was not inordinate and the right to be heard was a cornerstone of the rule of law. They sought that their application to be allowed.
10. The application was opposed by the respondent’s replying affidavit sworn on the October 19, 2020 in which the respondent deponed that the application was not truthful as the applicants had been aware of the delivery of the judgement because they had had counsel representing them present in court when the judgement was delivered, and that he had subsequently served them with a demand note annexed to the judgment on November 12, 2018.
11. The respondents admitted that on the October 11, 2018, the date for judgment had been delivered in the presence of a counsel who had held brief for the applicants’ counsel and who noted the dated for the October 25, 2018 on which day the 2nd applicant was in court (para 3) of their supplementary affidavit.
12. On the June 4, 2020 the applicants had also been represented by counsel when the matter came up for hearing on an application for the execution of the decree, which decree had been conclusively determined when he gave vacant possession of the suit land measuring 0.25 as decreed in the subordinate court.
13. That the applicants had not demonstrated that they had an arguable appeal which had chances of success since their draft memorandum of appeal annexed to their supplementary affidavit did not disclose any arguable appeal or weighty issues.
14. That the applicants had been in deep slumber despite being aware of the delivery of the judgment since October 25, 2018. That the current application, filed four years after judgment was delivered, was an afterthought as the orders seeking the stay of decree had been overtaken by events since the decree had been executed and there was therefore nothing to stay. That the applicants’ conduct was further displayed by their inability to file the supplementary affidavit within 14 days as directed by the court.
15. While relying on the decided case of *County Executive of Kisumu v County Government of Kisumu & 8 others* [2017] eKLR the respondent sought for the applicants’ application to be dismissed with costs since they had failed the test on the principles of consideration on an application for the extension of time.
16. The application was disposed of by way of written submissions.



Determination.

17. I have considered, the applicants' application, the supporting and supplementary affidavit as well as the written submissions of both the applicants and the respondent. The judgment and decree sought to be stayed herein was delivered on the October 25, 2018 by the Magistrates' Court at Sotik in Sotik PMCC No 240 of 2014. The applicants have now filed the present application by way of a notice of motion dated August 5, 2020 which is about 1 year and 10 months later.
18. I find two issues for determination arising therein namely:
- i. Whether the court should enlarge time to enable the applicants file their appeal after the expiry of the statutory period.
 - ii. Whether the applicants have satisfactorily discharged the conditions warranting the grant of stay of execution of decree pending appeal.
 - iii. What orders this court should make.
19. Section 79G of the *Civil Procedure Act* which gives an appellate court discretion to extend time for filing an appeal from the subordinate court to the High Court (read Land and Environment Court) stipulates 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."
20. In the case of *Nicholas Kiptoo Arap Korir Salat v The Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR the court held that:
- "... it is clear that the discretion to extend time is indeed unfettered. It is incumbent upon the applicant to explain the reasons for delay in making the application for extension and whether there are any extenuating circumstances that can enable the court to exercise its discretion in favour of the applicant.
- "... we derive the following as the underlying principles that a court should consider in exercising 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;
 - a. a party who seeks extension of time has the burden of laying a basis, to the satisfaction of the court;
 - b. whether the court should exercise the discretion to extend time, is a consideration to be made on a case- to- case basis;
 - c. where there is a reasonable [cause] for the delay, [the same should be expressed] to the satisfaction of the court;
 - d. whether there will be any prejudice suffered by the respondent, if extension is granted;



- e. whether the application has been brought without undue delay; and
 - f. whether in certain cases, like election petitions, public interest should be a consideration for extending time” [emphasis supplied].
21. Has the applicant fulfilled the above requirements so as to be granted leave to file his appeal out of time?
22. The gist of the matter in question is that judgment in the trial court was delivered on the October 25, 2018, the applicants have now filed the present application dated August 5, 2020 seeking to file their appeal out of time so as to stay of execution of the decree arising from the judgment.
23. The 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. The applicants’ submissions that they was unable to file their appeal on time because they were not present when the judgment was delivered and/or that they were not availed the copy of the judgment and proceedings on time is not substantiated. No letter calling for the proceedings was annexed to their supporting and/or supplementary affidavit and further by the 2nd applicant’s own admission at paragraph 3 of their supplementary affidavit, he confirmed to having been present in court on the date the judgment had been delivered. Indeed on the October 11, 2018 when the date for judgment was given, both the plaintiff and the defendant were in court. I find, that there has been no reasonable explanation submitted on the cause for the delay, which was expressed to the satisfaction of the court. There being no basis laid for the extension of time to the court’s satisfaction, the upshot is that the application for enlargement of time to enable the applicants file their appeal after the expiry of the statutory period is herein denied.
24. Having further considered the application, the supporting affidavit and the submissions hereto, and further having considered the respondent’s replying affidavit and submissions to the effect that the application had been overtaken by events when on the June 4, 2020, the applicants had also been represented by counsel when the matter came up for hearing on an application for the execution of the decree, which decree had been conclusively determined when he gave vacant possession of the suit land measuring 0.25 as decreed in the subordinate court, (see annexure PML5 which is a letter dated the October 7, 2020 confirming this position.) I find that since the application herein has been overtaken by events, there is nothing to stay.
25. In the end, the applicants’ notice of motion dated the August 5, 2020 lacks merit and is hereby dismissed in its entirety with costs to the respondent.

DATED AND DELIVERED VIA MICROSOFT TEAMS AT KERICHO THIS 8TH DAY OF DECEMBER 2022



**MC OUNDO
ENVIRONMENT & LAND – JUDGE**

