



**Njamburi v Titima (Environment and Land Appeal  
E036 of 2024) [2025] KEELC 3891 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3891 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT EMBU  
ENVIRONMENT AND LAND APPEAL E036 OF 2024**

**AK BOR, J  
MAY 8, 2025**

**BETWEEN**

**MICHAEL NTHIGA NJAMBURI ..... APPELLANT**

**AND**

**REUBEN NYAGA TITIMA ..... RESPONDENT**

*(Appeal against the decision of Hon S. Ngii, Principal Magistrate, delivered on 3/5/2024)*

**RULING**

1. The Appellant filed the application dated 12/8/2024 seeking leave to file an appeal out of time against the decision of Hon S. Ngii, Principal Magistrate, delivered on 3/5/2024. He also sought an order prohibiting the transfer, subdivision, sale or other dealings with the parcels of land known as Nthawa/ Riandu/ 6316 and 9045 (the suit land) pending hearing and determination of the application and the suit (sic). The heading of the application does not indicate that it is an appeal.
2. The application was made on the grounds that the Appellant had been unwell and in and out of hospital as a result of which he could not issue instructions to lodge an appeal to his advocates. He claimed that he had been living on the suit land since 1998 with his family and that he had developed it. He faulted the Respondent for selling the suit land without giving him notice of the sale despite knowing that the land was the subject matter of this ongoing suit. He urged that his suit would be rendered nugatory and that he would suffer irreparable damage if the orders sought in the application were not granted. He added that the delay in filing the appeal was inordinate but beyond his power.
3. The Appellant swore the supporting affidavit and deponed that he had been unwell and in and out of hospital for the last couple of months. That he was feeling better and wished to defend the suit to its logical conclusion. He claimed that he purchased 6 acres out of Nthawa/ Riandu/ 1942 which was the mother title for Nthawa/ Riandu/6316 and 9045. That parcel no 1942 was subdivided and he took



- possession of Nthawa/ Riandu/ 6316 and 3 acres out of Nthawa/Riandu/9045 after entering into the agreement. He claimed that the Respondent failed to process the title and transfer the land.
4. The Respondent swore the affidavit in opposition to the application and averred that the Appellant had not been provided sufficient reasons for the delay in filing the appeal. He stated that the Appellant filed other suits over the same subject matter being ELC Case No. 160 of 2018 which was dismissed on 8/8/2022; ELC Case No. 24 of 2022 which was dismissed on 12/6/2023 and ELC Case No. 18 of 2023 which was dismissed on 3/5/2024 for being res judicata. He annexed copies of the decisions and decrees emanating from those suits.
  5. The Respondent averred that despite being ordered to pay costs, the Appellant had failed to pay the costs. The Respondent sought to have the Appellant provide security for costs. He denied that the Appellant was in occupation of the suit land and added that since he was not the registered proprietor of parcel 6316 the court cannot issue orders against a third party who is not a party to these proceedings.
  6. The court directed parties to file written submissions which it has considered. The Appellant submitted that he filed the application 60 days after the stipulated time for filing a memorandum of appeal. He urged that the delay was occasioned by factors beyond his control and that the proceedings of the trial court were availed late. He stated that he was unwell for a couple of months and could not instruct his advocate to proceed with the appeal but did this as soon as he got out of hospital.
  7. He relied on Article 50 of *the Constitution* on the right to a fair trial, Section 79 of the *Civil Procedure Act* and Order 42 Rule 6 of the Civil Procedure Rules.
  8. The Respondent submitted that the Appellant had not attached evidence to show that the trial court delayed to supply proceedings to him and that he did not exhibit a copy of the application he made for proceedings which makes it difficult to ascertain when the request for proceedings was made and when the typed proceedings were supplied to the Appellant.
  9. The Respondent pointed out that the Appellant filed the memorandum of appeal on 27/8/2024 without leave of the court thus making the appeal defective. He added that an appeal must be instituted within 30 days of the date of judgment and that the judgment of the trial court was delivered on 3/5/2024. He urged the court to expunge the Memorandum of Appeal dated 12/8/2024 from the record and dismiss the application dated 12/8/2024.
  10. The issue for determination is whether the court should allow the Appellant to file his appeal out of time. When this matter came up on 6/2/2025, the court gave orders for the status quo to be maintained and proceeded to give directions for the hearing of the appeal and scheduled the hearing of appeal for 27/3/2025. The directions for the filing of submissions given on 6/2/2025 were based on the mistaken belief that there was a proper appeal before this court filed within time. That erroneous position regarding the appeal was corrected on 27/3/2025 when the Appellant's advocate told the court that there was a pending application dated 12/8/2024 seeking to have the memorandum of appeal admitted out of time.
  11. The court agrees with the Respondent that no evidence or medical records were provided by the Appellant to confirm that indeed he was admitted in hospital and could not give instructions in time to his lawyer to lodge the appeal. The delay from 3/5/2024 when the judgment was delivered up to 27/8/2024 when the application was brought has not been explained. The law requires that an appeal be instituted within 30 days from the date of judgment. It was improper for the Appellant to file a memorandum of appeal and the record of appeal when he was already outside time for lodging an appeal. The proper procedure would have been for him to first file the application seeking to have the appeal admitted out of time and annex a draft memorandum of appeal.



12. The trial court's file shows that the Appellant applied for proceedings on 19/6/2024. The payment for the proceedings was made on 27/5/2024.
13. The averments by the Respondent that the Appellant had previously filed ELC Case No. 160 of 2018 which was dismissed on 8/8/2022; ELC Case No. 24 of 2022 which was dismissed on 12/6/2023 and ELC Case No. 18 of 2023 which was dismissed on 3/5/2024 for being res judicata was not controverted by the Appellant.
14. The trial court struck out the suit for being res judicata. Based on this, it would not serve any useful purpose to grant the orders sought in the present application.
15. The court declines to grant the orders sought in the application dated 12/8/2024. The Respondents is awarded the costs of the application.

**DELIVERED VIRTUALLY AT EMBU THIS 8<sup>TH</sup> DAY OF MAY 2025.**

**K. BOR**

**JUDGE**

In the presence of: -

Diana Kemboi- Court Assistant

No appearance for the Appellant and Respondent

