



Waithaka v Gatumbi (Environment and Land Miscellaneous Case E066 of 2024) [2025] KEELC 5348 (KLR) (15 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5348 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND MISCELLANEOUS CASE E066 OF 2024**

JM ONYANGO, J

JULY 15, 2025

BETWEEN

TERESIA WAMBUI WAITHAKA APPLICANT

AND

MORRIS KARANJA GATUMBI RESPONDENT

RULING

1. What is coming up for Ruling is the Applicant's Notice of Motion application dated 30th September 2024, filed under Article 159 (2) (d) of *the Constitution* of Kenya, 2010, Sections 1A, 1B and 3A of the *Civil Procedure Act*, and Order 42 Rule 6 of the Civil Procedure Rules 2010, Cap 21 of the Laws of Kenya. In the said application, the Applicant seeks the following orders:
 1. Spent.
 2. Spent.
 3. That stay of execution of the decree in Gatundu-Misc App No. E032 of 2021 (Morris Karanja Gatumbi Stephen Waithaka Gatumbi & Flumence Kariuki Muriu) enforcing the award L.D.T 9 of 2006 be granted pending hearing and determination of the intended Appeal.
 4. That the court does grant the objectors leave to file and appeal out of time.
 5. That costs of this Application be provided for.
2. The Application is supported by grounds on the face of it and by the Supporting and Further Affidavits sworn by Teresia Wambui Waithaka (Applicant) on 30th September 2024 and 16th April 2025, respectively. The Applicant avers that she is the widow of Michael Waithaka Gatumbi and Administrator of his estate. She further avers that the said Michael Waithaka Gatumbi (deceased) was the legal owner of land parcel number Kiganjo/Mundoro/3119 (the suit land, formally known as



Kiganjo/Mundoro/460), before his death on 6th March 2014, having inherited it from the Estate of Gatumbi Waithaka(deceased) pursuant to the Grant issued in Succession Cause 291 of 1983.

3. She contends that the Respondent was present during the Confirmation of Grant in the succession suit with regard to the Estate of Gatumbi Waithaka(deceased). She adds that the Respondent never appealed the decision nor applied for revocation of Grant. She states that the Respondent instituted legal proceedings at the Gatundu Land Disputes Tribunal and filed Miscellaneous Application Number E032 of 2021 at the Gatundu Senior Principal Magistrates Court, where he obtained an order issued on 15th November 2023 mandating the Land Registrar, Gatundu, to excise one (1) acre from the suit land in enforcement of the orders of the Land Dispute Tribunal.
4. It is her position that neither she nor her late husband participated in or were served with pleadings filed in the proceedings at the Land Dispute Tribunal or the Senior Principal Magistrates Court. She depones that the Respondent acted maliciously with the intent of defrauding them of the suit land. She further depones that at the time the impugned order was made, the title had already passed to her late husband, hence the administrators sued in the proceedings had no legal or proprietary rights over the suit land. She adds that the Land Dispute Tribunal and the court in Miscellaneous Application Number E032 of 2021 acted ultra vires.
5. She states that she became aware of the orders issued by the Land Dispute Tribunal when the District Land Surveyor and the policemen visited her home on 4th September 2024 for the purposes of subdividing the suit land. She further states that by then, the statutorily stipulated time for appeal had already lapsed.
6. In the Further Affidavit, she states that she derives a beneficial interest in the suit land by virtue of spousal rights, possession and overriding interests under Section 28 of the Land Registration Act, 2012. She further states that the Land Disputes Tribunal lacked the legal mandate to determine issues of ownership and title, which fall within the jurisdiction of the Environment and Land Court as established under Article 162 (2) (b) and Section 13 of the Environment and Land Court Act.
7. She adds that the Land Dispute Tribunal's ruling delivered on 29th August 2006, cited by the Respondent, did not adjudicate on her matrimonial and beneficial interests, as she was never a party to the proceedings, rendering the Tribunal's decision non-binding upon her. She concludes that the Respondent has failed to demonstrate any prejudice he would suffer should the court grant the interim orders sought.
8. The Respondent opposed the Application through his Replying Affidavit sworn on 11th November 2024. It is his position that the court in Gatundu Miscellaneous Application Number E032 of 2021 issued orders affirming the award given in Gatundu L.D.T No. 9 of 2006, relating to the suit property. He depones that the Applicant is a stranger to the suit land, which is registered to Stephen Waithaka Gatumbi and Flumence Kariuki Muriu. He further depones that the Land Dispute Tribunal delivered its Ruling on 29th August 2006 in the presence of the Applicant's deceased husband, who did not appeal against the award because he was also a beneficiary of the said award.
9. He states that this Application is an abuse of the court process, given that the Applicant lacks capacity to institute this suit because she is not the registered proprietor of the suit land. He urged this court to dismiss the intended appeal because it has no chance of success.
10. The Application was canvassed by way of Written Submissions. The Applicant filed Written Submissions dated 7th May 2025, while the Respondent filed Written Submissions dated 14th February 2025.



11. Having perused the Application, the Replying Affidavit, and the parties' Written Submissions, the following key issues emerge for determination:
 - i. Whether the court should grant the Applicant leave to file an appeal out of time against the Judgment dated 15th November 2023.
 - ii. Whether the court should issue an order for stay of execution of the Judgment entered on 15th November 2023 pending the hearing and determination of this Appeal.

Analysis and Determination

Whether the court should grant the Applicant leave to file an appeal out of time against the Judgment dated 15th November 2023.

12. Section 79G of the *Civil Procedure Act* provides that:

“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.”

13. It is clear that the court has a wide discretion to extend time within which to file an appeal although the discretion must be exercised judiciously. In the case of the County Executive of Kisumu v County Government of Kisumu and 8 Others [2017] eKLR the Supreme Court of Kenya held as follows:

“(23) It is trite law that in an application for extension of time, the whole period of delay should be declared and explained satisfactorily to the Court. Further, this Court has settled the principles that are to guide it in the exercise of its discretion to extend time in the Nicolas Salat case to which all the parties herein have relied upon. The Court delineated the following as the under-lying principles that a Court should consider in exercise of such discretion:

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 for 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. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
- d. Whether there will be any prejudice suffered by the respondents if the extension is granted;
- e. Whether the application has been brought without undue delay; and



SUBDIVISION - Whether in certain cases, like election petitions, public interest should be a consideration for extending time.”

- 14. In the present case, the Applicant intends to appeal against the decision of the trial court given on 15th November 2023. The Applicant has explained that she filed this application on her behalf and on behalf of her late husband’s estate, being that she is the administrator of the said estate. She has sought an order for extension of time to file an appeal against the order of the trial court issued on 15th November 2023 in Miscellaneous Application No. E032 of 2021: Morris Karanja Gatumbi versus Stephen Waithaka Gatumbi & Flumence Kariuki Muriu. The said order was in enforcement of an award given by the Land Dispute Tribunal in Cause No. 9 of 2006. Neither the Applicant nor her late husband was a party in either of the two proceedings.
- 15. It is trite that the general rule is that a person must have been a party in the original suit/case in order to have the standing to have the standing to appeal.
- 16. In the case of Attorney General vs Bala (Civil Appeal 223 of 2017) [2023], the court of appeal stated that:

“The right to appeal is a creature of statute and an appeal can be presented, only: (i) by a party in the suit if he is aggrieved by the judgment; or (ii) by a person who is not a party but who is aggrieved by the judgment if he seeks and gets leave of the court to prefer an appeal against the judgment. Unless a right of appeal is clearly and expressly given by statute, it does not exist. Whereas a litigant has a right to institute any suit of a civil nature in some court or another, no right of appeal can be given except by express words. In other words, a right of appeal infers in no one and therefore an appeal for its maintainability must have the clear authority of law. The right of appeal, which is a statutory right, can be conditional or qualified. If the statute does not create any right of appeal, no appeal can be filed.”
- 17. Given that the Applicant or her deceased husband were not parties to the suit at the lower court and neither has she sought leave to appeal against the said decision, this court finds that the Applicant lacks locus standi to appeal against the decision of the lower court. For avoidance of doubt, the Applicant has only sought leave to appeal “out of time” in prayer (4) of this application.
- 18. Given that the plea to appeal out of time is rejected, the court will not delve into the prayer for stay of execution. Consequently, this court finds that the application dated 30th September 2024 lacks merit and it is hereby dismissed. The Applicant shall bear the cost of the Application.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 15TH DAY OF JULY 2025.

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J. M ONYANGO
JUDGE

In the presence of:
Miss Kadenge for the Applicant
No appearance for the Respondent
Court Assistant: Hinga

