



Ober v Jaimbo (Environment and Land Miscellaneous Application E007 of 2023) [2024] KEELC 1763 (KLR) (9 April 2024) (Ruling)

Neutral citation: [2024] KEELC 1763 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E007 OF 2023
GMA ONGONDO, J
APRIL 9, 2024
IN THE MATTER OF APPLICATION FOR LEAVE TO FILE AN APPEAL
OUT OF TIME**

BETWEEN

JULIUS OBER APPLICANT

AND

CHARLES OCHIENG JAIMBO RESPONDENT

(Appeal out of time, arising from judgment of Hon. E.m Onsere (Principal Magistrate) Ndhiwa Law Court on ELC No. 8 of 2019)

RULING

1. The present ruling pertains to an application by way of a Notice of Motion dated 29th September 2023 by the applicant who appears in person is seeking the orders infra;
 - a. Spent.
 - b. That this Honourable court be pleased to give leave to the Applicant to file an Appeal out of time, arising from judgment of Hon. E.m Onsere (Principal Magistrate) Ndhiwa Law Court on ELC No. 8 of 2019.
 - c. That costs of this application be provided for by the Respondent.
2. The application is rooted in the applicant’s supporting affidavit of even date and a copy of proceedings marked as “JOO-1” allegedly annexed to it and grounds 1 to 5 set out on the face of it. In brief, the applicant’s complaint is that trial’s judgment was delivered on 19th February 2020 and that the court did not specify days for appeal by an aggrieved party. That he did not obtain proceedings and judgment in time. That the intended appeal has high chances of success if leave is granted, in time.



3. By a replying affidavit of seventeen paragraphs sworn on 30th October 2023, the respondent who also appears in person, opposed the application, termed it misconceived, frivolous and vexatious and sought dismissal of the same with costs. Documents marked as “COJ-1 to COJ-4” which include; decree issued on 19th February 2020 by the trial court (COJ-1) and title deed (COJ-4), are annexed to the affidavit. The respondent deposed in part that the application has been overtaken by event as the applicant has been evicted from the suit land reference number Kanyamwa/Kajwang/Kachola/Kadwet/772. That the application is time barred due to the applicant’s failure to comply with the trial court’s verdict or appeal within the stipulated time frame. That the same is a waste of the court’s precious and or congested time or schedule and likely to occasion injustice to the respondent.
4. Also, the respondent averred that he is the owner and registered proprietor of the suit land which was the subject matter in Ndhiwa Law Courts Environment and Land case number 8 of 2019 where judgment was delivered on 10th February 2020. That the application is aimed at deceiving this court that property in dispute is the other land reference number Kanyamwa/Kajwang/Kachola/Kadwet/2437 and not the suit land.
5. The application was heard by way of written submissions further to this Honourable court’s directions of 1st November 2023.
6. By his submissions uploaded on the e-filing platform on 5th January 2024, the applicant implored this court to grant the orders sought in the application as he is the lawful owner of the other land title number 2437 and not the suit land which is unknown to him. That however, land reference number Kanyamwa/Kajwang/Kachola/Kadwet/2436 and the other land, are sub divisions of the suit land. That this dispute had been handled at Kisumu under the Land Disputes Tribunal Act No. 18 of 1990. That whereas judgment was rendered by the trial court on 19th February 2020, eviction order given in respect of the suit land, was not served on him.
7. There are no respondent’s submissions filed herein.
8. I have carefully considered the application, the replying affidavit and the applicant’s submissions in entirety. In that regard, has the applicant established good and sufficient cause for granting of the orders sought in the application?
9. The applicant laments that the court did not specify the timeline for lodging of an appeal from the judgment by an aggrieved party. Section 75 of the [Civil Procedure Act](#) Chapter 21 Laws of Kenya sets out the orders from which an appeal lies.
10. Section 79 G of the said Act provides for thirty days from the date of decree or order appealed against as the time frame for filing of appeals from subordinate courts. Nonetheless, an appeal may be admitted out of time so long as there is good and sufficient cause shown by the applicant.
11. Order 50 of the [Civil Procedure Rules](#), 2010 governs time. Clearly, the trial court’s judgment was delivered on 19th February 2020 and the date of filing of the application is taken into account herein.
12. In [County Executive of Kisumu-vs-County Government of Kisumu & 8 others](#) (2017) eKLR, the Court of Appeal held;

“It is trite that in application for extension of time, the whole period of delay should be declared and explained satisfactory to the court.”
13. Indeed, the instant application was lodged approximately three years seven months and ten days after the judgment. The applicant has not provided any plausible and satisfactory reason for the undue delay



thereof bearing in mind the guiding principles stated in the case of Nicholas Kiptoo Arap Korir Salatus-Independent Electoral and Boundaries Commission & 7 others (2014) eKLR.

14. Articles 10 (2) (b) of the Constitution of Kenya, 2010 enshrines the principles of equity. These include; Equity aids the vigilant and not the indolent, Delay defeats Equity. The applicant referred to a document (JOO-1) in his affidavit in support of the application. However, he failed to attach the trial court's proceedings and any proof that he obtained them late.
15. It is established law that delay for a day if not explained to the satisfaction of the court will result to dismissal of a case; see Raphael Musila Mutiso & 3 others-vs-Joseph Ndava Ntbuka and another (2019) eKLR.
16. Moreover, the respondent has established by way of decree and certificate of official search marked as "COJ-1" and "COJ-4" respectively attached to his replying affidavit that the property in dispute is now registered in his name. Thus, the application has been overtaken by events.
17. A fortiori, I find the present application devoid of merit and it is hereby dismissed with costs to the respondent.

DATED AND DELIVERED AT HOMA BAY THIS 9TH DAY OF APRIL 2024.

G.M. A ONG'ONDO

JUDGE

Present;

- a. The applicant in person
- b. The respondent in person
- c. Mutiva and Obunga, court assistants

