



**Karuguri v Mwangi (Environment and Land Appeal  
E028 of 2022) [2024] KEELC 5046 (KLR) (3 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5046 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT AND LAND APPEAL E028 OF 2022**

**JO OLOLA, J**

**JULY 3, 2024**

**BETWEEN**

**MUHURI KARUGURI ..... APPLICANT**

**AND**

**SYLVESTER GACHERU MWANGI ..... RESPONDENT**

*(Being an appeal against the judgment of Honourable B.M. Ochoi, PM at Mukurwe-in Law Courts Delivered on the 6th day of February 2018 in Mukuruwe-ini Civil Suit No. 19 Of 2015)*

**RULING**

1. By the Notice of Motion dated 10<sup>th</sup> November 2022 Muhuri Karuguri (the Applicant) prays for orders as follows:-
  3. That this Honourable Court be pleased to enlarge time and grant the Applicant leave to file an Appeal out of time against the Judgment/Decree dated 6<sup>th</sup> February 2018 in Mukuruweini Civil Suit No. 19 of 2015- Sylvester Gacheru Mwangi –v- The District Land Registrar Nyeri County & Another;
  4. That there be a stay of execution of the aforesaid Judgment/Decree pending the hearing and determination of such appeal as may be preferred against the said Judgment/Decree upon leave being granted by this Honourable Court;
  5. That this Honourable Court be pleased to order /direct that the status quo of the illegally acquired subject suit land Gikondi/Gikondi/1862 be maintained;
  6. ....
  7. That the Honourable Court out-rightly issues an order to the Respondent halting/estopping the transfer (of the) subject suit land Gikondi/Gikondi/1862;



8. That in the alternative and without prejudice to Paragraph 5 above, the Honourable Court be pleased to order/direct that the Respondent to surrender in court the illegally acquired Title deed to the subject suit land upon such terms as the court may determine;
  9. That the Officer Commanding Karaba Police Station do enforce compliance of the orders above; and
  10. That the costs of this application be provided for.
2. The application which is supported by an affidavit sworn by the Applicant is premised inter alia, on the grounds that:-
- a). By a Judgment delivered on 6<sup>th</sup> February 2018, the court noted that the Defendants had entered appearance through the Attorney General but they willingly and knowingly neglected to participate in the proceedings;
  - b). The Applicant was not aware of the existence of the said suit and was therefore adjudged and condemned unheard contrary to Article 50 of the Constitution;
  - c). The Applicant was enjoined as the as the Interested Party in the said suit some eleven (11) months after Judgment was delivered in the afore mentioned suit;
  - d). The Judgment was executed on 10<sup>th</sup> February 2022 when the 1<sup>st</sup> and 2<sup>nd</sup> Defendants visited the suit property to determine the actual perimeter boundaries;
  - e). The Applicant's otherwise very meritorious application for setting aside the Judgment was dismissed by the Trial Court; and
  - f). The Applicant is apprehensive that unless the Respondent is restrained by way of the orders sought herein, the Respondent will occasion him irreparable harm.
3. Sylvester Gacheru Mwangi (the Respondent) is opposed to the application. In his Replying Affidavit sworn and filed herein on 6<sup>th</sup> October 2023, the Respondent avers that both the Applicant and his deceased brother were enjoined as parties in the lower court on 22<sup>nd</sup> January 2019 after Judgment had already been delivered and that they did not file any pleadings therein.
4. The Respondent further avers that the Judgment delivered in the lower court has already been executed and that the boundaries have already been identified and beacons placed around the suit land.
5. I have carefully perused and considered the application as well as the response thereto. I have similarly perused and considered the submissions placed before the court by the Learned Advocates representing the parties.
6. By his application placed before the court, the Applicant prays for a raft of orders. In the main, the Applicant urges the court to enlarge time and grant him leave to file an Appeal out of time against the Judgment/Decree dated 6<sup>th</sup> February 2018 as delivered in Mukurweini PM CC No. 19 of 2015. In addition, the Applicant prays for an order of stay of execution of the said decree and/or for this court to order maintenance of the status quo pending the Appeal.
7. As it were, an application for extension of time to file an appeal must show good and substantial reasons for the delay, and *prima facie* good cause why the intended Appeal should be heard. As was stated



by the Supreme Court in *Nicholas Kiptoo Arap Korir Salat -v- Independent Electoral and Boundaries Commission & 7 Others* (2014) eKLR.

- i). 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;
  - ii). A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
  - iii). Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
  - iv). Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
  - v). Whether there will be any prejudice suffered by the Respondents if the extension is granted; and
  - vi). Whether the application has been brought without undue delay.
8. In the matter before me, the Applicant contends that he was condemned unheard in the Judgment rendered in the Lower Court on the 6<sup>th</sup> February 2018. It was further his case that he was unaware of the Judgment and hence he was unable to appeal against the same within the requisite time.
9. On his part, the Respondent avers that both the Applicant and the Applicant's deceased brother were enjoined as parties in the suit in the Lower Court on 22<sup>nd</sup> January 2019 and that they failed to file any pleadings thereafter and should not therefore be allowed to challenge the same. In addition, the Respondent contends that the application before the court has since been overtaken by events as the decree issued by the Lower Court has already been executed and the boundaries of the suit land fixed as directed by the court.
10. From the material placed before me, it is evident that by a Plaint dated 10<sup>th</sup> June 2015, the Respondent herein sued the District Land Registrar and District Land Surveyor Nyeri County seeking for orders as follows:-
  - a). An order directing and or compelling the defendants to visit land parcel No. Gikondi/ Gikondi/1862 and locate the beacons and determine the actual perimeter boundaries thereof;
  - b). Costs of the suit with interest; and
  - c). Any other or further relief the court deems fit and just to grant.
11. In support of those prayers, it was the Respondent's position that he had in the year 2011 paid a sum of Kshs. 6,000/= to the two Defendants and requested them to visit the suit land and to locate and determine the perimeter boundaries and beacons but the two Defendants named in the suit failed and or refused to comply.
12. In their Statement of Defence dated 31<sup>st</sup> May 2015, the two Defendants stated inter alia that the request made by the Respondent was not within the law and that the requested action was against Public Policy for not involving all concerned parties before the requested exercise could be lawfully undertaken.
13. After hearing the Respondent's case (the two named Defendants did not tender any evidence), the court proceeded to deliver its Judgment dated 6<sup>th</sup> February 2018 allowing the prayers made by the Respondent.



14. Arising from the foregoing, there was no doubt that the Applicant was not a party to the suit and was therefore unaware of the same and could not have filed pleadings as purported by the Respondent. In my considered view and as was rightly stated by the District Land Registrar and District Surveyor, Nyeri County, in their Statement of Defence aforesaid, there was no way an exercise to locate beacons and determine the actual perimeter boundaries of the Respondent's land could be done without involving those whose parcels of land abutted that of the Respondent.
15. It was further evident that when the Applicant learnt of the proceedings in the Lower Court, he did by an application dated 20<sup>th</sup> September 2018 seek an order to be joined as an Interested Party and for the Judgment to be set aside. In a Ruling rendered on 22<sup>nd</sup> January 2019, the Honourable B.M. Ochoi, SPM, allowed the application for joinder by the Applicant but declined to set aside the Judgment.
16. Consequent upon the Judgment and decree of the lower court, the two named Defendants- the District Land Registrar and the Surveyor moved to the suit land on 10<sup>th</sup> February 2022 and purported to fix the boundaries of the suit land as directed.
17. In the circumstances herein, I was persuaded that the Applicant had laid a proper basis for the grant of an extension of time to appeal. I was also persuaded that pending the institution of the said appeal, there was need to preserve the suit land in its current status to avoid a miscarriage of justice.
18. Accordingly I hereby allow the Motion dated 10<sup>th</sup> November 2022 in part and hereby make the following orders:
  1. The Applicant is hereby granted 21 days within which to file the proposed Appeal against the Judgement/Decree dated 6<sup>th</sup> February 2018 as delivered in Mukurweini PMCC No. 19 of 2015.
  2. The parties herein shall maintain the status quo prevailing as at the date of this Ruling pending the hearing and determination of the intended Appeal.
  3. In the event the Applicant fails to file the intended Appeal within the 21 days as directed, this application shall stand dismissed.
  4. There shall be no order as to costs.

**DATED, SIGNED AND DELIVERED AT NYERI THIS WEDNESDAY 3<sup>RD</sup> DAY OF JULY, 2024.**

In the presence of:

Mr. Mwangi for the Applicant.

Mr. Mathaiya Baaru for the Respondent.

Court Assistant: Michael

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**J. O. OLOLA**

**JUDGE**

