



REPUBLIC OF KENYA



KENYA LAW
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**Kuyana v Kiseet (Land Case Appeal E028 of 2024)
[2024] KEELC 14233 (KLR) (1 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 14233 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
LAND CASE APPEAL E028 OF 2024
MN MWANYALE, J
JULY 1, 2024**

BETWEEN

PAUL OLE KUYANA APPLICANT

AND

PARMET OLE KISEET RESPONDENT

RULING

1. The Application dated 20th January 2025 subject of this Ruling seeks a review and/or setting aside of the orders made on 18th November 2024 which dismissed for nonattendance the application dated 24th September 2024 and further seeks reinstatement of the said application which had sought stay of execution of the judgment delivered on 12th July 2024 by Hon. W.C. Waswa Senior Resident Magistrate in Kilgoris CME & L No. 13/2020.
2. The grounds in support of the Application are that application dated 24.9.2024 was dismissed as the Applicant's advocates had misdariased the date and did not attend court. The non-attendance was not deliberate and the same should not be visited on the Applicant.
3. The Application is supported by the supporting affidavit of the Applicant who depones and reiterates the grounds in support of the application.
4. The Application is opposed by the Respondents who have filed grounds of opposition raising grounds interalia,
 - i. That the application sought to be reinstated is founded and/or premised on an incompetent Appeal filed out of time without leave of the court as the impugned judgment was delivered on 12th July 2024 and an appeal out to have been filed by 12th August 2024 and none was filed by that time.



5. On 24/2/2025 when the Application came up for directions Ms. Bosibori appeared for the Applicant and indicated that she had been served with a Replying Affidavit and a Notice of Preliminary Objection and sought and was granted time to file a further affidavit. Hearing of the application was slated for 6/3/2025 by way of oral submissions. It was directed that a hearing Notice be served upon the firm of O.M Otieno Advocates who has filed a notice of appointment on behalf of the Respondent.
6. On 6/3/2025 Both Ms. Bosibori and Mr. Otieno appeared in the matter. Mr. Otieno indicated that the P/O as well as the replying affidavits could be treated as responses to the Application while Ms Bosibori sought and was granted time to file written submissions on the Application and a mention date for 3rd April 2025 was given whereat Ms. Bosibori for the applicant/ appellant informed court that she no longer had instructions in the matter and she was granted 14 days within which to file an application to cease acting in the matter and a further mention date for direction was given for 14.5.2025.
7. On 14.5.2025, Ms. Bosibori was absent but she had equally not filed the application to cease acting in the matter as previously directed and court directed the matter the application to be heard by way of oral submissions on 9.6.2025 and that Ms. Bosibori who was still on record to be served with a Hearing Notice.
8. On 9.6.2025, Mr. Otieno appeared for the respondent while Ms. Bosibori or the Applicant was absent, and the court satisfied as to the service of the hearing notice on Ms Bosibori, allowed the Application to proceed.
9. Mr. Otieno learned counsel submitted for the dismissal of the application for want of prosecution as the Applicant's counsel was not present to prosecute the same. He further submitted that the application sought to be reinstated in any event was misconceived as the appeal had been filed out of time without leave and the application had no basis to stand on.
10. The court has considered the respondent's submissions and frames the following as issues for determination: -
 - i. Whether or not there is a competent Appeal before court.
 - ii. Whether or not the application is merited.
 - iii. What orders ought to issue.
 - iv. Who bears the costs of the application.

Analysis and Determination

11. On issue number 1, Memorandum of Appeal is dated 24.09. 2024, the Record of Appeal is equally dated 24.09.2024. The impugned Judgment was delivered on 12.07.2024.
12. It is clear that the 30 days within which to file an Appeal lapsed on or about 11.08.2024, and the Memorandum of Appeal having been dated and in September 2024, was filed out of time.
13. There was no leave sought and granted for the Appeal to be filed out time, hence there is no competent Appeal before court for the court to consider the stay of execution application which was dismissed and its reinstatement is sought by the application subject of this ruling.
14. On issue number 1, the court finds that there is no competent Appeal before court.



15. On issue Number 2, the application for stay having no legal basis to stand on, in view of the incompetent Appeal, therefore is a nonstarter and the same lacks merit and the same was not prosecuted and thus stands dismissed for want of prosecution and non-attendance.
16. Noting that the Judgment was delivered more than 1 year ago and execution/eviction has not commenced the Respondent shall cause a Notice of eviction to be issued in accordance with Section 152E of Lands Act before commencing any execution and/or eviction process.
17. The upshot is that the application dated 20.01.2024 is hereby dismissed while the Memorandum of Appeal dated 24.09.2024 is struck out.
18. Costs of the Application are awarded to the Respondents.

DATED AT KILGORIS THIS 1ST DAY OF JULY, 2025.

HON. M.N MWANYALE

JUDGE

In the presence of

CA – Emmanuel/Sylvia/Sandra

Ms. Opondo h/b for Mr. Otieno for the Respondent

N/A for the Appellant acting in person

