



**Muga v Okelo (Miscellaneous Application 030 of 2024)
[2024] KEELC 6570 (KLR) (8 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6570 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
MISCELLANEOUS APPLICATION 030 OF 2024
SO OKONG'O, J
OCTOBER 8, 2024**

BETWEEN

JANE ADHIAMBO MUGA APPLICANT

AND

PAMELA ADHIAMBO OKELO RESPONDENT

RULING

1. What is before the court is the applicant's application dated 24th May 2024. The applicant has sought leave to file an appeal out of time against the judgment of Hon. K.Cheruiyot SPM delivered in the lower court on 8th June 2022 in Kisumu CMC ELC No. 7 of 2020, *Pamela Adhiambo Okelo v. Jane Adhiambo Muga* and a stay of execution of the said judgment pending the hearing of the intended appeal to this court. The application was filed on 3rd June 2024 more than 1 year and 11 months after the delivery of the judgment sought to be appealed.
2. The applicant has contended that she was not aware of the judgment of the lower court until 1st August 2023 when some people came to her compound and informed her that her case in the lower court had been dismissed. The applicant has averred that upon getting this information, she went to the lower court and confirmed that indeed her claim had been dismissed. The applicant has averred that it was after this confirmation that she instructed her previous advocates to request for the typed copies of the proceedings for the purposes of filing an appeal. The applicant has averred that she was thereafter served with a notice to show cause why she should not be evicted from Kisumu/Pandpieri/2528 which she had occupied as her ancestral home for over 40 years. The applicant has averred that it was upon the advice of the lower court during the hearing of the said notice to show cause that she instructed her current advocates to file the present application. The applicant has averred that her intended appeal has a good chance of success. The applicant has averred that the delay in the filing of the application was caused by misinformation from her former advocates and her poor health.



3. The application is opposed by the respondent through a replying affidavit sworn on 1st July 2024. The respondent has averred that in a judgment delivered on 8th June 2022, the lower court entered judgment in her favour against the applicant and dismissed the applicant's counter-claim against her. The respondent has averred that the lower court ordered the applicant to vacate the parcel of land known as Kisumu/Pandpieri/2528}} (the suit property), and to demolish the structures she had put up thereon. The respondent has averred that after the said judgment was delivered, the applicant applied for a stay of execution of the same through a Notice of Motion dated 21st June 2022.
4. The respondent has averred that the lower court allowed the applicant's application for a stay of execution in a ruling delivered on 15th June 2023. The respondent has averred that the lower court granted the applicant a stay of execution for 60 days and liberty to seek a further stay of execution before this court where the applicant intended to file the appeal. The respondent has averred that she was given liberty to execute the decree after the expiry of 60 days. The respondent has averred that the applicant has neither vacated the suit property nor filed an appeal before this court despite having been given an extension of the stay that was granted by the lower court. The respondent has averred that the application before the court was brought after a prolonged and inordinate delay of 1 year and 11 months. The respondent has averred that the applicant is misleading the court when she claims that she was not aware of the lower court's judgment. The respondent has averred that the applicant applied for a stay of execution in the lower court soon after the said judgment was delivered. The respondent has averred that the applicant was undeserving of the orders sought. The respondent has averred that the applicant's application lacked merit and amounted to an abuse of the court process.
5. The application was argued orally on 25th September 2024. I have considered the applicant's application together with the supporting affidavit. I have also considered the respondent's affidavit filed in opposition to the application and the submissions by the advocates for the parties. The applicant's application has two limbs. The first limb is seeking an extension of time within which to file an appeal against the decision of the lower court while the second limb is seeking a stay of execution of the said decision pending the hearing of the intended appeal.
6. Section 16A (1) of the *Environment and Land Court Act*, 2011 provides that all appeals from subordinate courts and local tribunals shall be filed within 30 days from the date of the decree or order appealed against. Section 16A (2) of the said *Act* provides that:

“ An appeal may be admitted out of time if the appellant satisfies the court that he had a good and sufficient cause for not filing the appeal in time.”
7. Sufficient cause was defined in *Attorney General v. Law Society of Kenya & another* [2017]eKLR as follows:

“ Sufficient cause or good cause in law means:
8. ...the burden placed on a litigant (usually by court rule or order) to show why a request should be granted or an action excused. See *Black's Law Dictionary*, 9th Edition, page 251.
9. Sufficient cause must therefore be rational, plausible, logical, convincing, reasonable and truthful. It should not be an explanation that leaves doubts in a judge's mind. The explanation should not leave unexplained gaps in the sequence of events.”
10. The court's power to extend the time to file an appeal against a decision of the lower court is discretionary. A party approaching the court for an extension of time must demonstrate that he deserves the exercise of the court's discretion. The judgment sought to be appealed was delivered on 8th



June 2022. The appeal against the same should have been filed by 8th July 2022. The present application was filed on 3rd June 2024 after a lapse of 1 year and 10 months from the time when the applicant was supposed to file the appeal.

11. I agree with the respondent that a delay of over 1½ years to file an appeal or an application for an extension of time is inordinate. I find no reasonable explanation for this delay from the material before me. The applicant's claim that she was not aware of the lower court's judgment until 1st August 2023 is incorrect. The uncontroverted evidence placed before the court by the respondent shows that the applicant filed an application for a stay of execution in the lower court dated 21st June 2022 and was granted 60 days stay of execution. This means that the applicant was aware of the judgment and could have filed the intended appeal within the prescribed period if she wished to do so. The applicant has also claimed that she was prevented from filing the appeal due to ill health. The medical records placed before the court by the applicant show that she was discharged from the hospital on 22nd June 2022 having been admitted as an in-patient on 17th June 2022. The applicant was not admitted in hospital on 8th June 2022 when the judgment of the lower court was delivered and she was able to apply for a stay of execution on 21st June 2022. The applicant's ailment could not therefore have prevented her from filing the appeal. For the foregoing reasons, I find no merit in the limb of the applicant's application seeking an extension of time within which to appeal against the lower court judgment.
12. The limb of the application seeking a stay of execution was dependent on the outcome of the first limb that sought an extension of time within which to file an appeal against the lower court judgment. Having ruled that no good grounds exist to warrant the extension of time to appeal, the application for a stay pending the hearing of the intended appeal equally fails since a stay of execution order cannot be made in a vacuum. Since the applicant has no appeal or an intended appeal, an order for stay pending appeal is not available to her. The limb of the application seeking a stay of execution would also fail for another reason. Order 42 Rule 6 of the *Civil Procedure Rules* provides that an application for a stay of execution must be brought without unreasonable delay. The application before me was brought 1 year and 11 months after the judgment sought to be stayed. I have found the delay inordinate and unexplained. The application for stay would fail for having been brought after unreasonable delay even if the applicant had made a case for the grant of extension of time to file the intended appeal.
13. In conclusion, I find no merit in the applicant's application dated 24th May 2024. The application is dismissed with each party bearing its costs.

DELIVERED AND DATED AT KISUMU ON THIS 8TH DAY OF OCTOBER 2024

S. OKONG'O

JUDGE

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

Mr. Mwamu h/b for Mr. Omondi for Applicant

Mr. Mbeka for the Respondent

Ms. J. Omondi-Court Assistant

