



M'Mburugu v Mburugu & another (Environment and Land Miscellaneous Application E015 of 2023) [2023] KEELC 18742 (KLR) (12 July 2023) (Ruling)

Neutral citation: [2023] KEELC 18742 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E015 OF 2023**

**CK NZILI, J
JULY 12, 2023**

BETWEEN

GLADYS KIRIMI M'MBURUGU APPLICANT

AND

JENNIFFER RINYA MBURUGU 1ST RESPONDENT

ALICE CHAKU MBURUGU 2ND RESPONDENT

RULING

1. By an application dated 24.4.2023, the court is asked to grant leave for the applicant to appeal against the judgment delivered on 16.2.2023 in Nkubu PMC No. 30 of 2020. The reasons are contained on the face of the application and the supporting affidavit of Gladys Karimi M'Mburugu on 24.4.2023.
2. The applicant contends that he appeared for judgment on 8.12.2022 when the trial court was not sitting and was directed to the advocates on record. The applicant averred that his lawyers on record made several inquiries only to learn on 17.4.2023 that the same had been delivered on 16.2.2023. After that, the applicant averred the certified copies of the judgment, and proceedings though paid for, were not availed except the judgment.
3. The applicant claims that she was likely to be evicted from the land she has occupied since 1989 and, therefore, she should be allowed to appeal against the judgment. The applicant has attached a letter dated 17.4.2023 as annexure AKM "1" copy of the judgment and the draft memorandum of appeal.
4. The application is opposed through the affidavit sworn on 10.5.2023 by Jeniffer Rinya Mburugu, the 1st respondent, on behalf of herself and the 2nd respondent, on the basis that no letters have been attached for the alleged follow-ups. The respondents averred that the applicant was all aware of the court's decision but was only out to frustrate the pending succession cause of the deceased's estate awaiting confirmation of the grant.



5. The respondent further averred that no security had been offered since a decree is already out, the memorandum of appeal raises notable issues or arguable grounds to reverse the lower court decision, the appeal will occasion prejudice to them it was an afterthought, an abuse of the court process, a waste of court's time and lacking merits.
6. In written submissions dated 4.5.2023; the applicant submitted that guided by *MFI Document Solutions Ltd vs. Paretto Printing Works Ltd* (2021) eKLR, *County Executive of Kisumu vs County Government of Kisumu & others* (2017) eKLR and *Nicholas Arap Korir Salat vs IEBC & 7 others* (2014) eKLR she was entitled to the orders sought.
7. Section 79 G of the *Civil Procedure Act* provides that a court may extend the time to file an appeal out of time for good reasons. In the case of Nicholas Kiptoo Arap Korir Salat (supra), the court set out some of the considerations as follows;" an extension of time is a matter of discretion exercisable only to deserving parties who have the burden satisfactory to lay the basis; it is based on case to case situation a reasonable reason for delay should be offered; prejudice to the opposite party has to be considered; the application has to be brought without undue delay, and public interest has to be considered."
8. In this application, the applicant blames the trial court for delaying the judgment on its due date and for failing to notify her of the judgment date. How and through which means the respondents came to know and attend the judgment delivered on 16.2.2023 has not been clarified. The respondents have not told the court how their advocates on record became aware of the date for the delivery. There is no evidence of how the trial court notified the parties to attend the judgment date. Other than saying that the applicant was aware of the contents of the judgment, the respondents do not lay the basis of how the applicant became aware of the judgment if not on 17.4.2023.
9. A cursory glance at the draft memorandum of appeal shows that the intended appeal raises some arguable points. Similarly, the delay in moving the court was not inordinate and has been sufficiently explained. The upshot is that I find the applicant entitled to an undoubted right of appeal. The application is allowed. I direct that the intended memorandum of appeal be filed and served within 14 days from the date hereof costs to the respondents.
10. File closed.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 12TH DAY OF JULY 2023

In presence of

C.A John Paul

Miss Kithinji for Mbaabu Inoti for the applicant

HON. CK NZILI

ELC JUDGE

