



**Ooro v Ondiek (Environment & Land Case E030 of 2021)
[2023] KEELC 21214 (KLR) (2 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21214 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT & LAND CASE E030 OF 2021
SO OKONG'O, J
NOVEMBER 2, 2023**

BETWEEN

BENARD OCHIENG OORO PLAINTIFF

AND

JOHN OWINO ONDIEK DEFENDANT

RULING

1. The plaintiff brought this suit on 23rd July 2021 by way of Originating Summons dated 5th July 2021 seeking orders that he had acquired all that parcel of land known as Title No. Kisumu/Ojola/3719 (the suit property) by adverse possession and that he be registered as the owner thereof in place of the defendant. In a judgment delivered on 26th January 2023, the court found the plaintiff's suit proved and entered judgment for the plaintiff against the defendant as prayed in the Originating Summons together with the costs of the suit.
2. What is now before me is the defendant's application brought by way of a Notice of Motion dated 15th May 2023 and filed on 5th June 2023 seeking an extension of time to file a Notice of Appeal against the said judgment. The defendant has averred that he is dissatisfied with the judgment of the court delivered on 26th January 2023 and wishes to appeal against the same to the Court of Appeal. The defendant has averred that the judgment in this matter was supposed to be delivered on notice. The defendant has averred that no notice was served upon the parties for the delivery of the said judgment. The defendant has averred that it was upon making an inquiry at the court registry on 3rd April 2023 that his advocates on record learnt that judgment was delivered in the matter on 26th January 2023. The defendant has averred that by the time his advocates learnt of the judgment, the time within which the defendant was to file a Notice of Appeal had lapsed. The defendant has averred that he was prevented by just cause from filing a Notice of Appeal within the prescribed time. The defendant has averred that his intended appeal has good chances of success and that the application has been brought without unreasonable delay.



3. The application was not opposed by the defendant. I have considered the applicant's application together with the supporting affidavit. The defendant's application has been brought under Section 7 of the [Appellate Jurisdiction Act](#), Chapter 9 Laws of Kenya which provides as follows:

Power of High Court to extend time

The High Court may extend the time for giving notice of intention to appeal from a judgment of the High Court or for making an application for leave to appeal or for a certificate that the case is fit for appeal, notwithstanding that the time for giving such notice or making such appeal may have already expired:

Provided that in the case of a sentence of death no extension of time shall be granted after the issue of the warrant for the execution of that sentence."

4. The court's power to extend the time to file a Notice of Appeal to the Court of Appeal against the decision of this 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 26th January 2023. The judgment was supposed to be delivered on notice. The defendant/applicant has averred that no notice was given to the parties that the judgment would be delivered on 26th January 2023. I have perused the court file. There is no evidence that a notice was served upon the parties to appear in court for the delivery of the said judgment. There is also no indication that any of the parties were present when the judgment was being delivered. In the absence of a notice of the date for delivery of the judgment, there was no way the defendant could have known that the judgment was to be delivered on 26th January 2023. I am satisfied that the defendant has given a reasonable excuse for his failure to file a Notice of Appeal within the prescribed time.

DIVISION Conclusion

5. It is my finding that good and sufficient cause has been shown by the defendant to warrant the granting of the extension of time sought. Consequently, I allow the application dated 15th May 2023 and extend the time within which the defendant was to file a Notice of Appeal up to 16th November 2023. Each party shall bear its own costs.

DELIVERED AND DATED AT KISUMU ON THIS 2ND DAY OF NOVEMBER 2023

S. OKONG'O

JUDGE

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

N/A for the Plaintiff

Ms. Odhong for the Defendant

Ms. J.Omondi-Court Assistant

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