



**Kirimi v Mworia & another (Environment and Land Appeal
E068 of 2021) [2022] KEELC 14506 (KLR) (2 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 14506 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL E068 OF 2021
CK NZILI, J
NOVEMBER 2, 2022**

BETWEEN

JOHN MARK KIRIMI APPELLANT

AND

ROBERT MATUMBI MWORIA 1ST RESPONDENT

LYFORD MUTHURI GITANGATA 2ND RESPONDENT

RULING

1. The court is asked to review, set aside and or vacate the orders made on July 5, 2022 striking out the appeal for non-compliance.
2. The application is based on an affidavit in support by John Mark Kirimi, the appellant/applicant sworn on July 15, 2022.
3. The reasons given are that the directions which the court issued on November 30, 2021 were not communicated to the applicant or his advocates on record and hence he should not suffer for mistakes of the court and his lawyers.
4. Further, the applicant urged the court to be guided by article 159 of the Constitution and hear his appeal on merits otherwise his livelihood will stand destroyed by demolishing the subject property even before the case is heard.
5. The court record indicates the appeal was filed on June 10, 2021 out of a ruling made on May 27, 2021, whereof the trial court declined to uphold a preliminary objection on jurisdiction under sections 18 (2) of the Land Registration Act and instead granted a temporary order of injunction against the applicant over LR No's. Nkuene/1078 & 1079 until the suit is heard and determined. The two applications related to ELC No 51 and 52 of 2020.



6. This appeal was admitted for hearing on January 30, 2021. The court directed that the record of appeal be filed within 60 days from the date thereof. A mention date for January 27, 2021 was given before the Deputy Registrar to confirm compliance.
7. Subsequently, the applicant filed an application dated November 16, 2022 for stay of execution which was certified urgent and placed for inter-partes hearing on January 17, 2022. A preliminary objection was filed by the respondent and directions were given for the filing of written submissions with respect to the preliminary objection. A ruling was delivered on March 16, 2022 in the presence of the applicant's counsel and directions given for the implementation of the court orders in the lower court with a scene visit. A mention date for April 21, 2022 issued to confirm compliance.
8. On April 21, 21, parties appeared in court and prayed for more time to comply with the scene visit report. A mention date for July 5, 2021 was taken.
9. The applicant attended court in person and was told to come back at 10.45 am. The applicant came back at 10.45 am without his advocates on record. The respondent sought for the dismissal of the appeal for non-compliance, which the court allowed.
10. Eventually, the applicant filed the instant application which was certified urgent and given an interpartes hearing for September 20, 2022. Once again counsel for the applicant failed to attend court at 9.00 am or at 10.45 am, the time that the matter had been allocated to prosecute the application. The court nevertheless listed the application for a ruling date.
11. Looking at the court record, it is clear the lower court file was availed before this court on September 6, 2021 and directions were issued on November 30, 2021. Prior to the said directions, the applicant had come to court with an application dated November 16, 2021 which was certified urgent on December 1, 2021.
12. The applicant is the one who filed the appeal and had an obligation to fast track its hearing by complying with court directives.
13. Instead of following up the progress of this appeal for over a year after filing and close to nine months after the directives were issued, the applicant is now blaming both the court and his lawyers for mistakes which he urges the court to pardon and reinstate the appeal for hearing.
14. There is no affidavit by the applicant's lawyers on record owning up the alleged mistakes. The applicant and his advocates on record are duty bound in law to follow court orders. They cannot choose which orders or directives they will comply with and the ones they will not comply with.
15. The lower court case is yet to be heard on merits and therefore it can not be true that the applicant herein would be condemned unheard. The court in ELC Petition No. E004 of 2020 *John Mark Kirimi vs the Inspector General of Police and 4 others* struck out the applicant's petition on February 10, 2021 for *inter alia* unfairly blaming the court, being untruthful or candid and delaying the court process over the same subject land.
16. In the premises I find the application lacking merits. The same is dismissed with costs.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 2ND DAY OF NOVEMBER, 2022

In presence of:

C/A: Kananu



Murira for Kimathi Kiara for applicant

Otieno C. for respondent

HON. C.K. NZILI

ELC JUDGE

