



Ogolo v Chairman, Board of Governors, St Barnabas Girls Secondary School (Miscellaneous Civil Application 100 of 2020) [2023] KEHC 17825 (KLR) (22 May 2023) (Ruling)

Neutral citation: [2023] KEHC 17825 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS CIVIL APPLICATION 100 OF 2020**

RE ABURILI, J

MAY 22, 2023

BETWEEN

GEORGE ORWA OGOLO APPLICANT

AND

**THE CHAIRMAN, BOARD OF GOVERNORS, ST BARNABAS GIRLS
SECONDARY SCHOOL RESPONDENT**

RULING

1. The Applicant is George Orwa Ogolo. He seeks orders vide his application dated March 20, 2020 for leave to file an appeal out of time from the Judgment delivered on February 27, 2019 in Maseno Senior Resident Magistrate ELC No 55 of 2018 which copy of Judgement is annexed to the affidavit in support sworn by the Applicant. The Judgment was rendered by Hon R S Kipngeno, SRM.
2. The application is opposed by the Respondent *vide* a Replying affidavit sworn by Benta A Ayacko, the Principal of the Respondent school, St Barnabas Girls Secondary School urging the court to dismiss the application as the same was brought with undue unexplained delay and that the application is not brought in good faith.
3. In the grounds and affidavit in support of the application, the applicant claims that he is disabled and that he did not have money to hire a lawyer until a good Samaritan led him to the firm of NE Mogusu & Associates who agreed to handle this matter for the Applicant free of charge. That he has a robust appeal with overwhelming chances of success and that the application is brought in good faith.
4. The applicant also filed written submissions on February 9, 2021 reiterating the application, grounds and supporting affidavit.
5. I have considered the application, annexures, Replying affidavit and the submissions by the Applicant. The issue for determination is whether the application has any substance. To arrive at the decision, it is important to interrogate the cause of action before the Magistrate's Court.



6. The suit was initiated before the Environment and Land Court, at Maseno Senior Principal Magistrate's Court. The Claim, vide Plaint dated December 23, 2013 as reproduced in paragraph 1 of the Judgment dated February 27, 2019 was for title to land parcel No Kisumu/Katieno/3229. It was claimed that the Defendant had declined to sign transfer forms to effect the transfer of the parcel of land to the Plaintiff despite consent to subdivide being given by the Land Control Board on October 30, 2002.
7. The Plaintiff, now Respondent prayed for orders "directing the Land Registrar, Kisumu District to execute the transfer forms with regard to Parcel No Kisumu/Katieno/3229 and register the same in the names of St Barnabas Girls Secondary School."
8. In the Judgment sought to be impugned, the trial court issued an order directing the Land Registrar, Kisumu to execute the transfer forms with regard to parcel No Kisumu/Katieno 3229 and register the same in the names of St Barnabas Girls Secondary School, together with costs of the suit to be paid by the Defendant.
9. With the above background of the Claim and Orders issued by the lower court, it is clear that the claim was over title to land.
10. Article 162(2) (b) of the Constitution is clear on which court is to hear and determine disputes, relating to title to land and the court is Environment and Land Court, whether the lower court or on appeal.
11. In addition, Article 165(5) (b) of the Constitution expressly bars the High Court from hearing and determining disputes which are reserved for the courts completed in Article 162(2) of the Constitution and the Supreme Court.
12. Jurisdiction is everything without which, a court of law acts in vain. The moment the court finds that it has no jurisdiction to hear and determine a matter, it must down its tools and say no more. It is now not news anymore that Parliament enacted the ELC Act in 2011 and conferred it with jurisdiction to hear and determine disputes as contemplated in Article 162(2) (b) and (3) of the Constitution.
13. Section 13(1) and (7) of the Act is clear on the jurisdiction of the ELC and the orders and or remedies that it can give. The lower court already gave a remedy which is transfer of the disputed land in favour of the Respondent herein.
14. The only other court that would be clothed with jurisdiction to hear and determine an appeal arising from the determination on title to land, is the Environment and Land Court and not the High Court.
15. These are simple facts which every advocate ought to know.
16. In this case, it is clear that the intended appeal cannot lie to this court, however, meritorious it may turn out to be.
17. I find this application misplaced. It is hereby dismissed for want of jurisdiction.
18. Each party to bear their own costs of the application dated March 20, 2020.
19. This file is hereby closed.
20. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 22ND DAY OF MAY, 2023

R. E. ABURILI

JUDGE

