



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

MISCELLANEOUS APPLICATION CASE NO. E017 OF 2021

FLORENCE GATWIRI KUBAI

(Suing on behalf of HENRY KUBAI – Deceased).....APPLICANT

VERSUS

ROBERT M'NGAI M'ITURIGU.....DEFENDANT

RULING

1. By a motion dated **28.5.2021** brought under **Order 51 rules 1, 3 and 4** of the **Civil Procedure Rules, Articles 48 and 159** of the **Constitution**, the applicant seeks leave to appeal out of time against a ruling delivered on **21.1.2021** in **Tigania PMCC No. 11 of 2020**.
2. The reasons given on the face of the application and the supporting affidavit sworn on 28.5.2021 are: that of sickness, the appeal raised arguable point, delay is not inordinate and there will be no prejudice to the respondent.
3. Further the applicant has attached to the affidavit a copy of a limited grant issued on **4.1.2021** for the estate of **Henry Kubai** who was the defendant in the lower court. The grant indicates he died on **15.6.2021**.
4. The respondent opposes the notice of motion through a replying affidavit sworn on **5.10.2021** on the grounds that; there has been inordinate delay; there is prejudice since the applicant is illegally occupying the subject land; the preliminary objection was properly dismissed and that the applicant should await the outcome of the lower court case.
5. Having looked at the rival submissions and pleadings, while the court has discretion to extend time under **Sections 95 & Section 79 (G)** of the **Civil Procedure Act** a party seeking such orders has to show sufficient reason and that no prejudice will be occasioned to the respondent if the orders sought are granted.
6. The applicant has alleged sickness as per the attached medical reports. There is also evidence the applicant applied for letters of grant ad litem. To my mind these are sufficient reasons to justify grant of the orders sought.
7. Similarly, the intended appeal raises issues. One, whether the respondent had capacity to institute a suit against a deceased person without bringing in a legal representative; two, whether the lower court suit is still ripe on account of abatement under **Order 24** of the **Civil Procedure Rules**.
8. Due to the foregoing the court finds there will be no prejudice to the respondent by granting leave to appeal out of time. The application is allowed. The appeal shall be filed within 7 days from the date hereof.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 17TH DAY OF NOVEMBER, 2021

In presence of:

Robert M'Ngai – present

Applicant – absent

Court Assistant - Kananu

HON. C.K. NZILI

ELC JUDGE