



REPUBLIC OF KENYA



KENYA LAW
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**Riungu v Micheni (Civil Appeal 33 of 2019)
[2024] KEHC 13725 (KLR) (7 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13725 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
CIVIL APPEAL 33 OF 2019
LW GITARI, J
OCTOBER 7, 2024**

BETWEEN

CATHERINE MUTHONI RIUNGU APPELLANT

AND

DORIS KINYA MICHENI RESPONDENT

RULING

1. This ruling relates to a Notice of Motion dated 15/9/2023 where the applicant seeks orders that;
 1. Spent
 2. The Honourable court be pleased to set aside the dismissal order issued on 1/3/2021 and reinstate the appeal herein for hearing and determination.
 3. That pending the hearing and determination of this application this honourable court be pleased to stay the hearing of the Notice to Show Cause dated 21/6/2023 in Chuka Chief Magistrate's Court Civil Suit No.163/2017.
 4. That costs be provided for
2. The application is supported by the affidavit of the applicant and is based on the following grounds:-
 1. That the plaintiff/respondent obtained a Judgment and subsequently a Decree against the Defendant/Applicant herein
 2. That the defendant/applicant instructed the firm of KITHINJI KIRIGIAH & Co. Advocates to appeal against the said Judgment.
 3. That the said firm filed a memorandum of appeal to wit Chuka High Court Civil Appeal No.33 of 2019.



4. That the said appeal was admitted on 30th June 2020, hence overwhelming chances of success, but the said advocates never presented the appeal leading to the same being dismissed for want of prosecution.
 5. That the Applicant all along thought that the said appeal was alive, pending hearing and determination.
 6. That the defendant/applicant was never informed of dismissal of the appeal by her previous advocates or by the High Court.
 7. That the defendant/applicant has now been served with an application for execution of Decree and Notice to Show Cause on 9th August 2023 where she then learnt that the appeal has been dismissed for want of prosecution.
 8. That it is trite, a client should not be punished for the mistakes, omissions and /or negligence of her previous advocates.
 9. That the defendant/applicant has already prepared an application for reinstatement of the appeal at Chuka High Court.
 10. That unless the prayers sought herein are granted, the plaintiff is likely to execute the said Decree against the defendant/applicant herein.
3. The applicant has reiterated these grounds in her Supporting Affidavit sworn on 15/9/2023. The respondent opposed the application and filed a Replying Affidavit.
 4. Her contention is that there was in-ordinate delay in filing this application. That there is a pending application for Notice to Show Cause which is pending before the Chief Magistrate. It is further submitted that the application has no chances of success as it was filed in the High instead of the ELC court which has jurisdiction. That the applicant took too long to check the status of the appeal and only cited upon being served with the Notice to Show Cause. That Justice is two ways and for her just delayed is justice denied.
 5. The application was canvassed by way of written submission.
 6. I have considered the application. The respondent has raised the issue of jurisdiction of this court to hear this application and the appeal. It is now well settled following a line of authorities that jurisdiction is everything and where a court of law lacks jurisdiction it must down its tools. It is therefore important that a court of law must satisfy itself that it has jurisdiction. If it does not have jurisdiction it cannot make one more step. See Owners Motor Vessel Lillian 'S'-v- Caltex Oil Kenya Ltd where the court stated "that jurisdiction is everything. Without it a court has no power to make one more step. A court of law downs its tools in respect of the matter before it if it holds the moment it holds the opinion that it is without jurisdiction."
 7. Section 13(1) & (2) of the [Environment and Land Court Act](#) confers jurisdiction to adjudicate all disputes relating to land on the Environment and land court. The Section states:-

The court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162 (2) (b) of the [Constitution](#) and with the provisions of this Act or any other law applicable in Kenya relating to environment and land. In exercise of its, jurisdiction under Article 162 (2) (b) of the [Constitution](#) the court shall have power to hear and determine disputes-



- a. Relating to environment and planning and protection, climate issues land use, planning, title, tenure, boundaries, rates, rents, valuations, mining minerals and other natural resources.
- b.
- c.
- d.
- e. any other dispute relating to environment and land.”

8. The suit was filed in the magistrate’s Court. I have looked at the Memorandum of Appeal and noted that the applicant was faulting the learned magistrate for holding that there was a valid land sale agreement between the applicant and the respondent.

9. On the other hand the Counsel for the respondent has submitted that the Case No. C.M.C. Case No.163/29017 was concluded and Judgment rendered on 23/10/2019 and a decree was issued. He submits that the case was premised on breach of sale of land agreement that the sale of land and breach of land touch on ownership and title to land which fall within the jurisdiction of Environment and Land Court established under Article 162 (2) (b) of the *Constitution*. That the applicant should have filed the appeal in the Environment and Land Court which has jurisdiction to hear appeals from the magistrate’s courts on matters relating to land and environment. Admittedly the dispute touched a dispute over land sale agreement. This court has not jurisdiction. Even if the court were to reinstate the appeal, that appeal would not see the light of the day as it would not be properly before this court. I should also point out there was in-ordinate delay in filing this application. Equity aids the vigilant and not the indolent. The applicant seeks exercise of discretion by this court. The discretion must be exercised judiciously. In view of the delay the exercise of discretion does not tilt in favour of the applicant but of the respondent who should not be denied the enjoyment of the fruits of Judgment any further.

10. In the end I find that the application is not properly before this court. It is dismissed for want of jurisdiction.

11. Costs to the Respondent.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 7TH DAY OF OCTOBER 2024.

L.W. GITARI

JUDGE

7/10/2024

Ms Faith Mutua for Appellant holding brief for Mr. Kirimi

M. Mugo for Respondent

The Ruling has been read out in open court.

L.W. GITARI

JUDGE

7/10/2024

