



**Ujji v Awiti (Environment and Land Miscellaneous Application  
E022 of 2024) [2025] KEELC 80 (KLR) (23 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 80 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E022 OF 2024**

**E ASATI, J  
JANUARY 23, 2025**

**BETWEEN**

**ERIC ODHIAMBO UJJI ..... APPLICANT**

**AND**

**PATRICIA OPONDO AWITI ..... RESPONDENT**

**RULING**

1. This ruling is in respect of the Notice of Motion application dated 7<sup>th</sup> May, 2024 expressed to be brought pursuant to the provisions of articles 25(c), 40, 48, 50(1) and 159(2) of *the Constitution* of Kenya 2010, Section 1, 1A, 3, 3A and 63 (e) of the *Civil Procedure Act* Cap 21 Laws of Kenya, Order 40 Rules 1, 2 & 3 and Order 50 Rule 6 of the Civil Procedure Rules. The application seeks for orders that;
  - a. There be an enlargement of the time limited by Order 50 Rule 6 of the Civil Procedure Rules, 2010 for the Applicant to file an appeal from the Ruling and Order of this court dated and delivered on 19<sup>th</sup> March, 2024, a ruling on a Preliminary Objection delivered by the Hon. F. Rashid in Kisumu ELC E155 OF 2023, under Order 50 Rule 6 of the Civil Procedure Rules, 2010.
  - b. The appeal be deemed to have been filed within the time prescribed as envisaged and provided for by Order 50 Rule 6 of the Civil Procedure Rules 2010.
  - c. The Applicant be granted leave to appeal to the High Court at Kisumu from the whole of the Ruling and order delivered by the Hon. F. Rashid in Kisumu ELC E155 OF 2023.
  - d. That the cost of this application be provided for.
2. The application was supported by the contents of the Supporting Affidavit sworn by the Applicant on 7<sup>th</sup> May, 2024, the annexures thereto and the Further Affidavit sworn on 14<sup>th</sup> October, 2024.



3. The application was opposed vide grounds raised in the Replying Affidavit sworn by the Respondent on 22<sup>nd</sup> July, 2024.
4. The grounds of the application are that the trial court delivered a ruling on 19<sup>th</sup> March, 2024 dismissing a Preliminary Objection. That Counsel did not file appeal within the time stipulated by law. That the non-compliance to file the appeal against the ruling is inordinate and unintentional as Counsel was indisposed. That it is in the interest of justice that the orders sought be allowed.
5. The Respondent's position as contained in the Replying Affidavit is that the Applicant filed the Preliminary Objection in the trial court after the parties had entered a consent and therefore the preliminary objection was dismissed.

That the application is a delaying tactic intended to stop the Respondent from enjoying her suit property out of the consent order adopted in court. That the Applicant is on a fishing expedition in trying to run away from a consent order adopted as a court order which has already been complied with as far as allowing the Applicant herein to bury the remains of his mother thereon as per the consent order. That the interment was done on 4<sup>th</sup> November, 2023 and that the Applicant continues to enjoy the portion of the suit land.

6. Counsel submitted further that it is imperative that parties comply with the consent order. That this is a fit and proper case for the court to decline to grant the orders sought. A copy of the consent order dated 3<sup>rd</sup> November, 2023 was filed herein.
7. The application was argued orally on 4<sup>th</sup> November, 2024. It was submitted on behalf of the Applicant that in an application for leave to file appeal out of time, the court should consider the period of and reason for delay, whether the Respondent will be prejudiced by the orders and whether the appeal is arguable.
8. Counsel submitted further that the Applicant had met the threshold. That there is no prejudice to be suffered by the Respondent if the orders sought are granted.
9. On behalf of the Respondent, it was submitted that the intended appeal is against a ruling that dismissed a Preliminary Objection.

That there was a consent that had been entered into by the parties settling the entire suit. That the Applicant had failed to disclose to the court that the suit was settled by consent.

The substantive prayers sought in the application is for leave to file appeal out of time.

10. The court record shows that the Notice of Preliminary Objection dated 21<sup>st</sup> November, 2023 was filed after the consent dated 3<sup>rd</sup> November, 2023 had been entered into. The Applicant does not deny, even in the Further Affidavit which was filed in response to the Replying Affidavit, the existence of the terms of the consent.
11. I find that in view of the existence of the consent order that settled the issues in controversy in the suit, the Applicant has not demonstrated that he has an arguable appeal. The Applicant has also not explained the delay in bringing the application.
12. I find that the grounds for grant of leave to file appeal out of time have not been demonstrated and that the application is overtaken by events.

The application dated May 7, 2024 is therefore dismissed. Costs to the Respondent.

Orders accordingly.



**RULING DATED AND SIGNED AT KISUMU AND DELIVERED THIS 23<sup>RD</sup> DAY OF JANUARY, 2025 VIRTUALLY THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

**E. ASATI,**

**JUDGE.**

In the presence of:

Maureen: Court Assistant.

No appearance for the Applicant

Odhong for the Respondent.

