



THE JUDICIARY



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANG'A
ELCL MISC E028 OF 2025

EUNICE NJERI MWANGIAPPLICANT
VERSUS
FRANCIS KAMAU MWANGI.....RESPONDENT

RULING

(1) This ruling is on the notice of motion dated 2-9-2025. The motion which is brought under **Orders 22 rule 22, 51** of the Civil Procedure Rules and all other enabling provisions of the law seeks the following residual orders.

2. Leave to file an appeal against the judgment in Murang'a ELC Case No. E006/2022 out of time.

4. That costs be in the cause.

(2) The motion is based on five(5) grounds and is supported by the affidavit of the Respondent dated 2-9-2025. The gist of the grounds and the affidavit is as follows. One, the Applicant applied for proceedings and judgment on 18-4-2023. Two, the said material was supplied on 29-5-2024 by which time, the statutory period for filing an appeal had expired. Three, the delay was clearly caused by the Court which did not issue a certificate of delay. Four the intended appeal has high chances of success.

(3) The motion is opposed by the Respondent who has filed a replying affidavit dated 4-3-2025 in which he replies as follows. Firstly, while the judgment in Murang'a MCELC Case No. E006 of 2022 was delivered on 14-12-2023, it was not until 18-4-2024 that the Applicant applied for proceedings. This was more than four (4) months after the delivery of judgment. Two, the Applicant applied for proceedings only after she was served with a bill of costs. The request for proceedings and judgment was in reaction to the Applicant's being served with the bill of costs. The court is therefore blameless and the Applicant was not entitled to be issued with a

certificate of delay. Three, the Applicant has not explained why it took her more than a year to file the proceedings after she was issued with the material on 29-5-2024. Finally, the appeal has no chances of success because the Applicant is living on the Respondent's land when she has her own land that she has refused to move to. For the above and other reason, he prays for the dismissal of the motion.

(4)I have carefully considered the motion dated 2-9-2025 in its entirety including the grounds, the supporting affidavit, the replying affidavit and all the relevant circumstances. I find that the following issues arise.

- (i) Whether the Applicant has offered good reasons for the delay.**
- (ii) Whether the intended appeal is arguable.**
- (iii) Whether the Respondent will suffer prejudice.**
- (iv) Whether the application was filed promptly.**

There are the parameters that guide the court in deciding whether a party which seeks to be granted leave to file an appeal out of time has shown sufficient cause for the delay.

(5)Regarding the first issue, I find that the Applicant has not offered good reasons for seeking to be given leave to file her intended appeal out of time. She has not responded to the response by the respondent that these proceedings were triggered by the bill of costs served upon her. There is no explanation as to why the current motion was filed in November 2025 yet the proceedings and judgment were supplied in May 2024. This delay of about one and half years is not explained. She is not saying that she was sick, or that her advocate made a mistake or that there was any reason at all for the delay.

(6)Prima facie, the appeal does not seem arguable because it is apparent that the Applicant has her own land but she is occupying the Respondent's land. She is not destitute. She does not therefore have a case with a high probability of success.

(7)The Respondent stands to suffer prejudice because there is no evidence that the Applicant has vacated the suit land. There is no evidence either to show that she is offering any security for the due performance of any decree that may found binding against her. She is not saying

what she will do compensate the Respondent in the event that her intended appeal is not successful.

For the above stated reasons, I find that the motion dated 2-9-2025 does not fall within the ambit of the proviso to **Section 79G** of the **Civil Procedure Act**. Consequently the motion is **dismissed** with the costs to the Respondent.

It is so ordered.

Dated, Signed and Delivered virtually at Murang'a this 12th day of May, 2026.

**M.N. GICHERU
JUDGE.**

Delivered online in the presence of; -
Court Assistant – Antony
Applicant - Present in person
Respondent's Counsel – Mr. T.M. Kariuki