



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KERUGOYA**

**MISC. CIVIL APPLICATION NO. 12 OF 2019**

**WAMBUGU NGAYUNI.....1<sup>ST</sup> APPLICANT**

**REGINA MUTHONI WAMBUGU.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**DAVID MWANGI KABIBI.....RESPONDENT**

**RULING**

1. The Applicants, Wambugu Ngayuni and Regina Muthoni Wambugu have moved this court vide a Notice of Motion dated 28<sup>th</sup> May, 2019 seeking leave for extension of time to file appeal against the judgment delivered before the Senior Resident Magistrate's Court on 12/03/2019 in CMCC No. 132 of 2015.

2. The Applicants in their supporting affidavit jointly sworn the same date stated that judgment was delivered in the absence of their counsel and even after being informed about the same, they promptly directed him to file an appeal. After persistently demanding to know the progress of their appeal, the advocate became evasive prompting them to request for proceeding and judgment on 19/3/2019. On 30<sup>th</sup> April, 2019, they were issued with a certificate of delay which they took to their counsel but as usual took no action.

3. In view of their ignorance and lack of sufficient advice from their counsel, the Applicants stated that they were not aware that they should have filed a notice of intention to appeal within 30 days of judgment being delivered. The Applicants stated that the delay in filing the appeal within time was not deliberate but was due to the mistake of their counsel which should not be visited upon them. The Applicants argued that the orders if granted will not prejudice the Respondent.

4. The Applicants filed a further affidavit sworn on 12<sup>th</sup> July, 2019 in response to the replying affidavit by the Respondent and reiterated their earlier position stating that the delay in filing the application was not inordinate nor deliberate. The Applicants also stated that this application is not an afterthought and that the intended appeal has high chances of success.

5. In response to that application, the respondent filed a replying affidavit and a notice of Preliminary Objection dated 4<sup>th</sup> July, 2019. In the Notice of Preliminary Objection, the Respondent contends that this Honourable Court has no jurisdiction to entertain the application under **Article 162 (1) (b) of the Constitution, Section 101 of the Land Registration Act No. 3 of 2012 and 5, 13 (2) (b) of the Environment and Land Court Act** as the subject matter of the intended appeal is a judgment emanating from a suit concerning a monetary claim and nothing to do with the ownership or land, use occupation and/or ownership as contemplated under **Section 13 of the Environment and Land Court Act No. 19 of 2011**.

6. In his replying affidavit, the Respondent stated that though the advocate for the Applicants did not attend court on the date of judgment, the Applicants themselves were present in court when the judgment was delivered. He also stated that the Applicants are guilty of inordinate delay in bringing this application which is an afterthought. He sought to have the application dismissed.

7. I have considered the application and the rival submissions. I have also considered the applicable law.

8. The Respondent has filed a Notice of Preliminary Objection stating that this Honourable Court lacks the requisite jurisdiction to entertain this application. **Section 13 (2) of the Environment and Land Court Act No. 19 of 2011** reads as follows:

***“3 (2) 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 environmental planning and protection climate issues, land use planning, title tenure, boundaries, rates rents, valuations, mining minerals and other material resources;*

*(b) relating to compulsory acquisition of land;*

*(c) relating to land administration and management;*

*(d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and*

*(e) any other dispute relating to environment and land.”*

9. From the copy of proceedings and judgment attached to the affidavit in support of this application, the claim by the Plaintiff/Respondent in the lower court case which is the subject of this appeal is for monetary claim of Kshs.950,000/= plus interest at the rate of 10% per month plus cost and interest. The Defendant/Appellant did not file a counterclaim to the Plaintiff's/Respondent's claim. A Civil Suit for a monetary claim where judgment is delivered and a party is dissatisfied is appealable to the High Court and not to the Environment and Land Court. The application for extension of time before me ought to have been made before the High Court to hear and determine such appeals.

10. I agree with counsel for the Respondent that this court lacks the requisite jurisdiction to hear and determine this application.

11. I therefore strike out the Notice of Motion dated 28<sup>th</sup> May, 2019 with each party to bear her own costs.

**READ, DELIVERED and SIGNED in open Court at Kerugoya this 11<sup>th</sup> day of October, 2019.**

.....

**E. C. CHERONO**

**ELC JUDGE**

**11<sup>TH</sup> OCTOBER, 2019**

*In the presence of:*

1. Ms Makworo holding brief for I.W. Muchiri for Respondent

2. 1<sup>st</sup> Applicant – present

3. 2<sup>nd</sup> Applicant – present