



**Gichimo t/a Jerusalem Gate Enterprises v Eberhard & another (Sued in Their Capacity as Trustees of Baptist Bible Mission of E.A Registered Trustees) (Environment and Land Case 310 of 2016) [2025] KEELC 5779 (KLR) (1 August 2025) (Ruling)**

Neutral citation: [2025] KEELC 5779 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT AND LAND CASE 310 OF 2016  
A OMBWAYO, J  
AUGUST 1, 2025**

**BETWEEN**

**GEORGE L.M. GICHIMO T/A JERUSALEM GATE ENTERPRISES APPLICANT**

**AND**

**JAMES EBERHARD ..... 1<sup>ST</sup> RESPONDENT**

**OLAF KONERUP ..... 2<sup>ND</sup> RESPONDENT**

**SUED IN THEIR CAPACITY AS TRUSTEES OF BAPTIST BIBLE MISSION OF  
E.A REGISTERED TRUSTEES**

**RULING**

**Brief Facts**

1. The Objectors/Applicants filed the instant application dated 23th April, 2025 seeking the following orders:
  1. Spent.
  2. Spent.
  3. That the 1st, 2nd and 3rd Objectors/Applicants herein be granted Leave to Appeal against the decision/Ruling of this court (Hon. A.O Ombwayo, J) dated 09/04/2025.
  4. That the costs of this application be in the cause of the intended Appeal.
2. The Application was based on grounds set out and supported by the Affidavit of J.W Gatu Magana the Applicant's advocate herein sworn on 23rd April, 2025. He stated that the Applicants dissatisfied with and wish to appeal against the entire decision /Ruling of this court dated 09/04/2025 dismissing their objection proceedings to allow execution of the decree to proceed against them. He further stated that



the impugned ruling was not delivered in the presence of the parties but instead posted on the court's CTS. He stated that the Applicants were thus denied the opportunity to make an oral application for leave to appeal at the time of delivery of the ruling.

3. He stated that the Applicants property Land Title No. Ruiru Town/261 was advertised for sale by public auction on 06/05/2025 and if the intended sale proceeds, the intended appeal would be rendered nugatory. He went on to state that the Applicants were never parties to the suit but only came in as parties at the execution stage after the suit had been heard and determined. He stated that the court did not address itself on the issues of service of the notices which was required to be issued by the court and auctioneers. He stated that the court failed to address itself on its admittedly premature ruling which denied the Applicants an opportunity to be heard. He urged the court to allow the application as prayed.

### **Response**

4. The Plaintiff/Respondent filed his Replying Affidavit sworn on 30th May, 2025 where he averred that the application had been overtaken by events and no purpose will be served by granting the orders. He further averred that the issues raised in the application were dealt with in this court's ruling delivered on 7th November, 2024 and 9th April, 2025. He averred that the Applicants did not appeal against the orders and therefore they could not bring up the same issues under the guise of seeking stay of execution pending appeal. He urged the court to dismiss the application with costs.

### **Submissions**

6. None of the parties filed submissions.

### **Analysis and Determination**

7. This court has carefully considered the application and the main issue for determination is whether the Applicants should be granted leave to file appeal .
8. Rule 75 of the Court of Appeal Rules provides as follows;
  1. Any person who desires to appeal to the court shall give notice in writing, which shall be lodged in duplicate with the Registrar of the Superior Court.
  2. Every such notice shall, subject to rules 84 and 97, be so lodged within fourteen days of the date of the decision against which it is desired to appeal.”
9. In the instant case, it is not in dispute that this court delivered its decision on 9th April, 2025. The Applicants now intend to appeal against the said ruling and it is trite law that they could do so within 14 days after the delivery of the ruling. It is this court's view that the 14 days would have lapsed on 23rd April, 2025. I have keenly perused the Applicants supporting affidavit and it is not in dispute that they have not filed any Notice of Appeal.
10. From the above provision of the law, it is clear that if the Applicants desired to prefer an appeal to the Court of Appeal, they ought to have done so as they were within the stipulated timeline without the need to seek leave, they instead filed the present application which in my view was misplaced to begin with. In addition, there is not Notice of Appeal filed by the Applicant.
11. However, what is being sought is leave to appeal and not leave to appeal out of time. This court has the power to grant leave to appeal as the applicant does not have the right to appeal. I do find that the application was made timeously and that the grounds of appeal are not frivolous. Ultimately, I do grant the applicant leave to appeal to the Court of Appeal.



**SIGNED BY: HON. JUSTICE ANTONY O. OMBWAYO**

**THE JUDICIARY OF KENYA. NAKURU ENVIRONMENT AND LAND COURT  
ENVIRONMENT AND LAND COURT**

**DATE: 2025-08-01 11:05:24**

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