



**M’Munoru v Mbiti (Environment and Land Miscellaneous Application E023 of 2023) [2024] KEELC 1127 (KLR) (28 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 1127 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E023 OF 2023  
CK NZILI, J  
FEBRUARY 28, 2024**

**BETWEEN**

**MEME M’MUNORU ..... APPLICANT**

**AND**

**ISAAC MBITI ..... RESPONDENT**

**RULING**

1. The court is asked to extend the time for the applicant to appeal against a judgment and decree in Maua CM ELC No 33 of 2017 delivered on 26.1.2023 and upon issuance the leave to stay execution of the same.
2. The application is based on the grounds on its face and a supporting affidavit of Meme M’Munoru sworn on 21.11.2023.
3. It is averred that after the judgment, which was delivered in the absence of his advocate the applicant sought for proceedings and judgment by a letter dated 7.2.2023, but was only supplied with the same on 16.10.2023. He attached the letter and the judgment as annexures marked MM "1" & "2".
4. The applicant says the delay is not inordinate or inexcusable, for the circumstances were beyond his control. Further, that he has established the respondent was planning to execute the decree as per a notification of sale and a redemption notice served yet he has an arguable appeal. He attached the draft memorandum of appeal as annexures marked MM "3 (a) – (b), 4, and 5," respectively.
5. The applicant avers the respondent is an impecunious person with no known assets or property and therefore, incapable of refunding the decretal amount upon successful conclusion of the appeal. The application is opposed through a replying affidavit sworn by Isaac Mboti on 13.12.2023, for lack of merits filed with inordinate and unexplained delay, based on misinformation, lies, and misrepresentation.



6. The applicant also avers he is ready, capable and willing to offer any reasonable security on such conditions as may be imposed by the court upon granting the orders sought. He says unless a stay is granted, the intended appeal will be rendered nugatory.
7. The respondent avers no explanation is made to show if any payments were made for the proceedings and judgment after the letter dated 7.2.2023 was filed. It is averred that the applicant went to slumber and was only awakened by the attachment; otherwise, the allegations of delay by the court are factually incorrect. Between receipt of the judgment and proceedings, the respondent averred that it took the applicant another month to file the application. Therefore, the applicant termed the delay of ten months inordinate and unexplained, only filed after the auctioneers had initiated the execution process for the damages and costs awarded by the lower court.
8. The respondent averred that the application was speculative since he would have filed the appeal with certified copies. Further, the respondent averred that the applicant was out to prolong the case, which started in 2017, for no good reason. Lastly, the respondent averred that no security has been offered and that there has been no demonstration of substantial loss to be suffered compared to what he stands to suffer as to his proprietary rights if a stay was granted.
9. By written submissions dated 14.12.2023 the respondent submitted that no plausible explanation had been offered as to why the court should exercise its discretion under Section 79G of the [Civil Procedure Act](#) to extend time. In addition, the respondent submitted that the affidavit in support of the application shows indolence on the part of the applicant who did not even procure a certificate of delay or a copy of the official receipt for the payments he had made to be furnished with the proceedings. The respondent termed a delay of 10 months inordinate. Reliance was placed on [Nginyaga Kavole v Mailu Gedion](#) Misc Application No 401 of 2018 and [Mombasa County Government v Kenya Ferry Services & another](#) (2019) eKLR.
10. On stay of execution, the respondent submitted that a ten-month delay was inordinate and unreasonable, no security of cost had been issued, and substantial loss was not demonstrated as required under Order 42 Rule 6 (1) of the [Civil Procedure Rules](#).
11. The principles to consider on whether to grant leave to appeal out of time were set in [Nicholas Kiptoo Arap Korir Salat v IEBC & others](#) (2014) eKLR, the court said an extension of time was not a right of a party and only available to a deserving party after laying a basis, the court will consider it on case to case basis; if there is a reasonable reason for the delay, prejudice to the opposite party; if the application was brought without undue delay and the public interest in the matter.
12. The applicant attributes the delay of ten months to the court registry at Maua, who, despite a request for typed proceedings and judgment on 7.2.2023, were availed on 6.10.2023. Other than annexures marked MM 1 and MM2 showing the date, receipt and the letter and certification for the judgment, which is three pages only, no payment receipts for the two and, or follow-up letters have been attached to show diligence on the part of the applicant.
13. A satisfactory explanation for the delay was required on the part of the applicant, which is missing, to account for the ten months. It is simply not enough to blame the court registry without basis. In [Habo Agencies Ltd v Wilfred Odhiambo Musingo](#) (2015) eKLR, the court said parties have a responsibility to show interest in and to follow up their cases even when represented by advocates.
14. The inaction of parties and their lawyers must be admitted even as they request the court's discretion. There was simply no follow-up and or payment of requisite fees for the proceedings and judgment. There is nothing to show that the judgment was not available earlier than the date of certification on 16.10.2023. I find no merit in the prayer for an extension of time since the same is inordinately long and



has not been sufficiently explained. See *Sokoro Savings & Credit Cooperative Society Ltd v Mwamburi* (C.A No E032 of 2022 (2023) KECA 381 (KLR) 31<sup>st</sup> March 2023) Ruling.

15. Regarding the stay of execution, the decree sought to be stayed has not been attached. The owner of LR No Igembe/Akirang'onde/1970 has not been indicated. A copy of the official search has not been attached to the supporting affidavit. The value of the land vis a vis the amount decreed in the decree and certificate of costs have not been explained. Whoever is in occupation and the nature of development made therein by the applicant has not been indicated.
16. In *James Wangalwa v Agnes Cheseto Naliaka* (2012) eKLR and *Jessikay Enterprises Ltd v George Muiruri* (2022) eKLR, the court said it was not enough to allege substantial loss without tangible and cogent material to sustain the allegations. Further in *Mukuma v Abuoga* (1998) KLR 645, the court said the substantial loss was what had to be prevented by preserving the status quo because such loss would render the appeal nugatory. In the instant case, other than saying the respondent was a man of straw, the applicant has not linked this with the land about to be auctioned.
17. From the lower court judgment, it appears the appellant's suit seeking an injunction and general damages was dismissed with costs. The appellant was ordered to pay the agreed damages of Kshs 250,000/= as per the miraa lease agreement. The court has found that there has been an inordinate delay in seeking leave to file an appeal out of time.
18. There is no pending appeal before the court. The applicant has not demonstrated any substantial loss. He is yet to pay the costs. The nature of the security the applicant intends to deposit as a condition has not been specified.
19. For those reasons, I find that the prayer for stay is unmerited. The application is, as a result of this, dismissed with costs.

Orders accordingly.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 28<sup>TH</sup> DAY OF FEBRUARY 2024**

In presence of

C.A Kananu

Miss Kinyanjui for Inoti for the Respondent

**HON. CK NZILI**

**JUDGE**

