



REPUBLIC OF KENYA



KENYA LAW
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**Chege & another v Adams (Civil Application E427 of 2022)
[2023] KECA 861 (KLR) (7 July 2023) (Ruling)**

Neutral citation: [2023] KECA 861 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E427 OF 2022
HM OKWENGU, JA
JULY 7, 2023**

BETWEEN

JOYCE RUGURU CHEGE 1ST APPLICANT

FLORENCE WAMAITHA CHEGE 2ND APPLICANT

AND

JANE MUCHUNU ADAMS RESPONDENT

(An application for leave to file a notice of appeal and appeal out of time from the Judgment of the Environment and Land Court at Thika (Eboso J) dated 28th March 2022 in Thika ELC No. 682 of 2017)

RULING

- [1] Joyce Ruguru Chege and Florence Wamaitha Chege were defendants in a suit that was filed by Jane Muchunu Adams against them and 3 others. The suit concerned a dispute over Land known as Kiambaa/Kihara/1023 (suit property). Upon hearing the suit, the learned Judge (Eboso J), dismissed a counter claim that had been filed by the applicants and declared that the cautions that they had registered against the properties was without lawful basis and directed the Land Registrar to remove the restriction and caution.
- [2] The applicants who are aggrieved have now moved the Court under Sections 1A, 1B and 3A of the *Civil Procedure Act*, Order 40 and 51(1) of the *Civil Procedure Rules* seeking inter alia; leave to appeal the judgment of the ELC out of time, and leave to file the notice of appeal and the record of appeal against the judgment delivered on March 28, 2022, as well as an order for stay of execution of the said judgment.
- [3] The applicants explain that delivery of the judgment, they decided to change advocates and by the time the finalized with the previous advocate and collected the file, the statutory period for filing the notice of appeal had already lapsed. The applicants maintain that they have an arguable appeal and that



no prejudice shall be suffered by the respondent, and that the application has been brought without undue delay.

- [4] The applicants have filed written submissions in which they urge the Court to exercise its discretion under Rule 4 of the [Court of Appeal Rules](#). The applicants cited [Andrew Kiplagat Chamaringo vs Paul Kipkorir Kibet](#) [2018] eKLR, and urged that they had given a good reason for the delay and that the delay was not inordinate. The applicants also urged the Court to grant an order of stay of execution of the judgment pending appeal.
- [5] In response to the motion, the respondent has filed a replying affidavit sworn on December 9, 2022. She contended that the applicants had wrongly sued her in her personal capacity as she was only an administrator of the estate of Robert Muchunu Mumbura (deceased). She contends that the mere facts that there was a change of advocates does not explain the lapse in filing the notice of appeal as required in law. She pointed out that the application for extension of time was made on November 16, 2022, which was 161 days after the decision, subject of the intended appeal and 135 days after the applicants' current advocates had filed notice of appointment. She therefore argued that the length of the delay was inordinate and the reasons for the delay have not been adequately explained.
- [6] The respondent averred that litigation concerning the suit property has been in court since 1994 and the judgment was delivered in favour of her late father, granting her the suit property by way of adverse possession. She stated that the estate of her deceased father will be prejudiced if the orders sought are granted.
- [7] I have considered the applicants' motion. At first glance, I note that it is brought under sections 1A, 1B and 3A of the [Civil Procedure Act](#), and Order 40 and 51(2) of the [Civil Procedure Rules](#). These are provisions that are ordinarily not applicable in this Court as the Court is governed by the provisions of the [Appellate Jurisdiction Act](#). For the applicants' prayer for leave to appeal out of time, I have power as a single judge under Rule 4 of the [Court of Appeal Rules](#) as read with Rule 55(1) to extend time and this is the provision that should have been invoked.
- [8] The applicants have also sought an order of stay of execution of the judgment delivered by the ELC, which application would fall under Rule 5(2) (b) of the [Court of Appeal Rules](#). However, under Rule 55(2), I have no power as a single judge to deal with such an application. I appreciate that the applicant had no hand in having the matter listed before me. I also appreciate Article 159 (2)(d) of the [Constitution](#) which obligates this Court to administer justice without undue regard to procedural technicalities.
- [9] For these reasons, I will remit the applicant's motion back to the Registry for it to be listed before an appropriate bench.

DATED AND DELIVERED AT NAIROBI THIS 7TH DAY OF JULY, 2023.

HANNAH OKWENGU

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

