



REPUBLIC OF KENYA



**Gaciani & 11 others v Kimanga & another (Civil Application
E054 of 2023) [2023] KECA 1579 (KLR) (27 October 2023) (Ruling)**

Neutral citation: [2023] KECA 1579 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E054 OF 2023
AO MUCHELULE, JA
OCTOBER 27, 2023**

BETWEEN

**KARINGA GACIANI 1ST APPLICANT
BEATRICE MUTHONI KARINGA 2ND APPLICANT
EUNICE WAGATWE KARINGA 3RD APPLICANT
MWANGI KARINGA 4TH APPLICANT
DENIS MURIMI KARINGA 5TH APPLICANT
MARY MUTHONI KARINGA 6TH APPLICANT
SARAH WANJIRU NJOGU 7TH APPLICANT
JOHN WAWERU KARINGA 8TH APPLICANT
SAMUEL WACHIRA KARINGA 9TH APPLICANT
FRANCIS GITHINJI KARINGA 10TH APPLICANT
FREDRICK KAVATIA KARINGA 11TH APPLICANT
JACKSON MACHARIAKARINGA 12TH APPLICANT**

AND

**NDEGE KABIBI KIMANGA 1ST RESPONDENT
AGNES WANGECHI 2ND RESPONDENT**

(Being an application for an extension of time to file and serve a Notice of Appeal, Memorandum of Appeal, and Record of Appeal out of time from the judgment of the Environment and Land Court of Kenya at Kerugoya (B.N. Olao. J.) dated 11th November 2016 in E.L.C. No. 220 of 2013)



RULING

1. This is a family dispute. The 1st respondent Ndege Kabibi Kimanga and the 1st applicant Karinga Gaciani are brothers, being the sons of the late Gaciani Kimanga. The 2nd respondent Agnes Wangechi is their sister-in-law. The 1st applicant is the husband to the 2nd applicant Beatrice Muthoni Karinga and 3rd applicant Eunice Wagatwe Karinga, and the rest of the applicants are their children. Land Parcel Mutira/Kaguyu/637 (the suit land) was in 1959 registered in the name of the 1st applicant who in 2011 caused it to be subdivided, as a result of which the respective portions (Mutira/Kaguyu/4932 to 4943) were transferred to the respondents.
2. The respondents went before the Environment and Land Court (ELC) at Kerugoya and claimed that the suit land was family land that belonged to the deceased Gaciani Kimanga and that the 1st applicant, being the eldest son of the deceased, had been registered to hold the land in trust for the rest of the children of the deceased; that the 1st applicant had instead fraudulently subdivided the land and transferred it to his family. They wanted the trust determined, the titles given to the applicants cancelled and each respondent given 1.5 acres of the parcel.
3. The suit was opposed. The substance of the defence was that the 1st applicant had been registered as the absolute proprietor of the suit land, and the issue of trust never arose.
4. The ELC Court (B.N. Olao, J.) on 11th November 2016 found that the 1st applicant had been registered to hold the suit land in trust for the deceased's family. The trust was ordered determined and the applicants were ordered to transfer one acre to each respondent upon the cancellation of the title deeds in question. The applicants were aggrieved by these findings and filed an appeal (Civil Appeal No. 9 of 2017 at Nyeri) which was heard and dismissed with costs by Justices of Appeal W. Karanja, M. Warsame and Asike-Makhandia on 9th July 2021.
5. The applicants sought to appeal to the Supreme Court and they sought the issuance of a certificate to confirm that that intended appeal raised a matter of general public importance. The application was dated 16th July 2021. It was withdrawn on 29th November 2022. The applicants filed an application to have the Supreme Court grant leave to file an appeal out of time. The Supreme Court dismissed the application on 21st April 2023.
6. In the meantime, the respondents sought to implement the decision of the ELC. The ELC delivered rulings dated 22nd January 2022 and 31st May 2023 to ensure the implementation.
7. The application before me is brought under Rule 4 of the *Court of Appeal Rules*. It seeks the extension of time to file and serve notice of appeal, memorandum of appeal and record of appeal. The application is dated 20th June 2023.
8. The respondents opposed the application as lacking in merits.
9. There is no merit at all in the instant application. The applicants were not satisfied with the decision by the ELC. They appealed to this Court. This Court confirmed the decision by the ELC, and dismissed the appeal with costs. The attempt to appeal to the Supreme Court did not succeed. What was left was to have the decision rendered by the ELC executed. Nothing was left to this dispute that can be the subject of an appeal by the applicants to this Court. There is no indication that what is sought to be appealed against are the orders of the ELC Court dated 22nd January 2022 and 21st April 2023. Indeed,



paragraph 12 of the supporting affidavit is clear that the applicants still have a problem with the ELC judgment that was rendered on 11th November 2016.

10. Consequently, the application is dismissed with costs.

DATED AND DELIVERED AT NYERI THIS 27TH DAY OF OCTOBER 2023

A.O. MUCHELULE

JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR

