



REPUBLIC OF KENYA



KENYA LAW
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Njue v Cabinet Secretary in charge of Lands and Physical Planning & 4 others (Civil Application E040 of 2022) [2022] KECA 1437 (KLR) (11 November 2022) (Ruling)

Neutral citation: [2022] KECA 1437 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E040 OF 2022
W KARANJA, JA
NOVEMBER 11, 2022**

BETWEEN

JEDIEL RWANDA NJUE APPLICANT

AND

**CABINET SECRETARY IN CHARGE OF LANDS AND PHYSICAL
PLANNING 1ST RESPONDENT
CHIEF LAND REGISTRAR 2ND RESPONDENT
DIRECTOR OF ADJUDICATION 3RD RESPONDENT
THE ATTORNEY GENERAL 4TH RESPONDENT
NJERU KIRIRIKA 5TH RESPONDENT**

(Being an application for leave to file an appeal out of time against the orders of the judgment and decree of the ELRC Court at Meru(N.wa Makau. J) dated 18th February 2021 in ELRC Case No.43 of 2019 formerly Nyeri 527 of 2017)

RULING

1. By way of a Miscellaneous Judicial Review Application No E001 of 2020, Jediel Rwanda Njue, the applicant and two others not before this Court moved the Environment and Land Court (ELC) for orders that:
 - a. An order of *certiorari* be issued to remove into the high court for the purpose of its being quashed a decision made by and or award by the 1st respondent(The Cabinet Secretary Ministry of Lands & Physical Planning) in respect of ;land parcel No 1413, 1414,1418 and 1412 Kamwimbi”A” Adjudication Section in minister appeal case No 95 of 2015 between Njeru Kiririka and Daglas Kanga Shadrack, Mbungu Nkari, M’kea M’iburura & Jediel Rwanda Njue, contained in the ruling dated September 3, 2020 and issued on October 9, 2020



awarding to Njeru Kiririka the interested party all the parcels herein constituting the disputed land and further amalgamating them into former parcel number 534.

- b. An order of prohibition be issued prohibiting the 2nd and 3rd respondents from altering the duplicate adjudication register to conform with the decision of the 1st respondent, nor certify on the duplicate adjudication register that it has become final in all respects, nor send details of the alterations and a copy of the certificate to the 3rd respondent for alteration of the adjudication register and or in any manner whatsoever effect the decision contained in the ruling dated September 3, 2020.
2. The respondents denied the claim and stated that the applicants had not proved that the decision-making process was flawed to warrant issuance of the judicial review orders sought. The application was heard but the learned Judge found no merit in the same and dismissed it with costs to the respondents.
3. Aggrieved by that decision, the applicant decided to appeal against it, but failed to lodge the Notice of appeal within 14 days from the day of delivery of the judgment prompting this application.
4. The applicant is before this Court by way of a Notice of motion dated June 10, 2022, brought under Rule 4 of the *Court of Appeal Rules* seeking leave to file a record of appeal out of time against the entire judgment. The motion is premised on the grounds that the time to lodge and serve the record of appeal has already lapsed; the delay in making the application for extension of time is not inordinate; the applicant lacked financial capacity to institute the appeal within the prescribed time; the respondent may commence execution proceedings at any time thus rendering the intended appeal nugatory; no prejudice shall be suffered by the respondents if leave is granted and that it is in the interest of justice and equity the application be allowed.
5. In his affidavit sworn in support of the motion, the applicant avers that he is dissatisfied with the entire judgment of the court; he is willing to abide by the conditions which the Court may set as a condition for grant of leave and that the respondents were in the process of extracting a decree and execution was foreseeable there being no stay of execution and that they may be left homeless if execution proceeds.
6. The application is opposed through the replying affidavit of one Njeru Kiririka, the 5th respondent, sworn on October 4, 2022 whereby he deposes that there is no explanation given for the delay and more importantly, that the Notice of appeal filed on May 27, 2021 was filed out of time without leave of the Court and the same is therefore invalid and cannot support the record of appeal.
7. I have considered the application, the rival affidavits and the submissions filed by counsel for the applicant. I am in agreement with the respondent that this application is a non-starter for the reason that the Notice of appeal on record was actually filed out of time, having been filed almost one month after expiry of the prescribed timelines for filing the appeal.
8. There is no prayer to extend time to file a Notice of appeal which is compliant to the *Rules*. The applicant specifically seeks extension of time “ to file record of appeal out of time”
9. A party is bound by its pleadings and I cannot grant orders that have not been sought. Even in his submissions, counsel for the applicant appears to proceed on the mistaken belief that there is a valid Notice of appeal on record, which is not so. As there is no valid notice of appeal on record, and no application for extension of time in that regard, I find this application intrinsically bad and devoid of merit. The same is hereby dismissed with costs to the 5th respondent.

DELIVERED AND DATED AT NYERI THIS 11TH DAY OF NOVEMBER, 2022.

W. KARANJA.



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JUDGE OF APPEAL.

I certify that this is a true copy of the original

DEPUTY REGISTRAR

