



Kibira v Board of Management St Tersa Secondary School & another (Civil Application E125 of 2021) [2021] KECA 324 (KLR) (17 December 2021) (Ruling)

Neutral citation: [2021] KECA 324 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT ELDORET
CIVIL APPLICATION E125 OF 2021
A MBOGHOLI-MSAGHA, JA
DECEMBER 17, 2021**

BETWEEN

JOSEPH WANYAMA KIBIRA APPLICANT

AND

**BOARD OF MANAGEMENT ST TERSA SECONDARY
SCHOOL 1ST RESPONDENT**

HASSAN NDAMWE WAKOLI 2ND RESPONDENT

(Being an application seeking time to file notice and record of appeal out of time in an intended appeal against a judgment of Environment and land Court at Kitale of (Njoroge J) dated 11th February, 2021) In Land Case No. 25 of 2012)

RULING

1. This is an application under Sections 3(A) and 3(B) of the [Appellate Jurisdiction Act](#) and Rule 4 of the [Court of Appeal Rules](#) seeking orders that time be extended for filing and serving the notice of appeal and the record of appeal, and the time within which to comply therewith be set. The application is supported by an affidavit sworn by the applicant to which there is a replying affidavit sworn by Justus Chatty Wafula, the Secretary to the Board of Management of the 1st respondent and also authorised by the 2nd respondent.
2. From the record, there has been a running dispute relating a parcel of land claimed by both parties. Eventually, the judgment herein was delivered on 11th February, 2021 in favour of the respondent. The applicant knew of the judgment on 5th March, 2021. Soon after, on 8th March, 2021 he filed an application in the Superior court under Section 7 of the [Appellate Jurisdiction Act](#) seeking extension of time within which to lodge a notice of appeal which application was dismissed on 9th August, 2021.



3. The present application was filed on 26th August, 2021 which was about five and half months from the date the judgment was delivered. Considering what transpired from the date of the judgment to the date the application was filed, the delay may not be considered inordinate.
3. That notwithstanding, I have to consider the other conditions set out in several decisions of this court which include, *Kenya Tea Development Authority v. Roy Transmotors Limited* - Civil Application No. Nai 168 of 2008 which cited *Leo Sila Mutiso v. Rose Hellen Wangari Mwangi* Civil Application No. Nai 251 of 1997.
4. The decision whether or not to extend time is discretionary. The court also shall consider chances of the appeal succeeding and if any prejudice shall be occasioned to the respondents.
5. I have looked at the Draft Memorandum of Appeal and related the same to the history of the dispute as can be discerned from the material presented. Running through the dispute is whether or not the applicant was possessed of the locus standi to litigate in respect of the subject matter. It is now settled that one may not litigate with respect to property said to belong to a deceased person without a grant of letters of administration. – see *Liberato Kiranga Manga vs. Prime Bank Limited* [2021] eKLR and *Trousitik Union International & Another vs. Jane Mbeyu* [1993] eKLR.
6. With that in mind, the applicant cannot be said to have an arguable appeal. It follows there that this application must fail and is therefore dismissed with costs to the respondents.

DATED AND DELIVERED AT NAIROBI THIS 17TH DAY OF DECEMBER, 2021

A. MBOGHOLI MSAGHA

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

