



Gloria v Liburu (Environment and Land Miscellaneous Application E011 of 2024) [2024] KEELC 4471 (KLR) (29 May 2024) (Ruling)

Neutral citation: [2024] KEELC 4471 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E011 OF 2024**

CK NZILI, J

MAY 29, 2024

BETWEEN

KATHURE GLORIA APPLICANT

AND

JEREMY THARIMBU LIBURU RESPONDENT

RULING

1. The court is asked to extend the time for the applicant to file an appeal out of time and also restrain the respondent from wasting, damaging, alienating, or otherwise dealing with L.R No's. Kianjai/Mituntu/510, 511, and Uringu 1/971 pending hearing of this application.
2. The reasons, as contained in the affidavit of Kathure Gloria sworn on 16.2.2024, are that she was joined in the lower court suit without her knowledge by the 1st defendant, her aunt, she is the registered owner of the suit parcels of land; there were similar suits between the parties over the subject matters namely Tigania SPMCC No. 148 of 2014 and 40 of 2015, her lawyers kept telling her that the defenses on the three suits were successful; it was only in October 2023 that she discovered judgment had been entered in favor of the plaintiff in those matters whose effect was that her three parcels of land revert to Daudi M'Liburu M'Kwilunga, that only save for file No. 79 of 2015, was unable to access the two other files and urge the court to grant the orders sought as she awaits to access them. The applicant attached copies of official searches, copies of pleadings and in the three files judgment in No. 79 of 2015, official searches after the entry of judgment and the proposed draft memorandum of appeal annexures marked K.G. 1 – 6, respectively.
3. The application is opposed by a replying affidavit of Jeremy Tharimbu Liburu sworn on 6.3.2024 for being full of falsehoods, an abuse of the court process and for not being a party in No. 79 of 2015. The respondent avers that the applicant is liable for the mistakes of his advocates and that the order alluded to in paragraphs 10 & 11 of the supporting affidavit was regularly and legally issued by the court.



4. The respondent avers that the applicant failed to defend herself, that the lower court and orders against her were issued in 2022 she went to slumber and failed to file an appeal, hence deserves no such orders. Lastly, the respondents termed the orders sought as unjust, a delaying tactic, and would amount to reverting the title deed from the rightful owner.
5. A party seeking to file an appeal from a lower court decree or order has to do so within 30 days under Section 79G of the *Civil Procedure Act*. The court handling the appeal under the reference section has a mandate or discretion to admit an appeal out of time. The parameters to consider are the length of the delay, reasons for the delay, the prejudice likely to occur to the opposite party, and the interests of justice.
6. In *Nicholas Arap Salat vs IEBC & others (2014)* eKLR, the supreme court of Kenya held that extension of time was not a right of any party but discretionary in nature only granted to deserving parties on a case-to-case basis where an applicant states the reasons for the delay, the public interest in the matter, the explanation for the delay, nature of the matter, prejudice to the opposite party and that the burden is on the party in default to the satisfaction of the court that he deserves the orders of extension of time and that the application must be brought without unreasonable delay.
7. The judgment sought to be appealed against was made *ex parte* on 28.4.2022. The applicant blames his lawyers in two other suits, who she says had instructions to defend the suit on her behalf just like in the other suits but kept on telling her that all was well until 19.10.2023. The applicant did not apply for the setting aside of the said judgment. A copy of the draft defense and witness statements, which the applicant signed or instructed the then lawyers to file and defend her, should have not been attached.
8. Evidence that the applicant instructed the lawyers to defend her in the said suit alongside the other suits has not been attached. The reasons for the delay between 19.10.2023 to 20.2.2024 have not been given. Evidence that the applicant made a follow-up with her lawyers between 2015 and 2023 is lacking. A case belongs to a party but not his or her lawyers. A party must show diligence by following up on his case. In *Peter Chemwolo & another vs Augustine Kubende (1982-1988) KAR/83*, the court said it often exists to decide the rights of the parties and not to impose discipline.
9. In *Murai vs Murai (1982) KLR*, the court said a mistake was a mistake and could be rectified in the interest of justice. In *Bi-Mach Engineers Ltd vs James K. Mwangi (2011) eKLR*, the court said the applicant had a duty to pursue his lawyers over the progress of his case and cited *Three Ways Shipping Services (Group) Ltd vs Mitchell Colts Freighters Ltd (2005) eKLR*, that justice must look both ways.
10. Applying the foregoing case law, the applicant does not bridge the gap between 2015 and 2023. The lack of communication between her and the lawyers is too much and has elicited too little explanation to be true. It is not every time that parties should blame the lawyers for inaction when disclosure of how much was put in motion to facilitate the cogs of justice to keep on moving without grinding is missing.
11. In *Rosemary Makena Mwangi & another vs Mwangi Harun & another (2008) eKLR*, the court said sufficient reason must be shown before the court can extend time. The length of delay of close to two years is inordinate. Whether there was any defense filed is not explained. The upshot is that I find no good reasons to extend time or grant an injunction. The application is dismissed with costs.

Orders accordingly.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU

ON THIS 29TH DAY OF MAY, 2024

In presence of



C.A Kananu

Respondent in person

Mwangi Kariuki advocate for the applicant present

HON. C K NZILI

JUDGE

ELC MISC E011 OF 2024 - RULING	0
--------------------------------	---

