M'inoti & another v Kiruki (Environment and Land Miscellaneous Application E012 of 2024) [2024] KEELC 4450 (KLR) (29 May 2024) (Ruling)

Neutral citation: [2024] KEELC 4450 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E012 OF 2024

CK NZILI, J

MAY 29, 2024

BETWEEN

JUSTUS GICHUNGE M'INOTI ..... 1ST APPLICANT

DOMINIC KIRIMI KINOTI ..... 2ND APPLICANT

AND

PASKWELINA NKIROTE KIRUKI ..... RESPONDENT

RULING

1. The court, by an application dated 15.2.2024, is asked to grant the applicants leave to file an appeal out of time against Meru CMC ELC No. 228 of 2018, delivered on 15.12.2023.

2. The reasons, as contained in the supporting affidavit sworn by Justus Gichunge M'Inoti, are that the judgment was read in the absence of the applicants, the application is timeously made, they stand to lose their land, irreparable loss and grave injustice would be occasioned if the prayers sought are not granted.

3. The application is opposed through a replying affidavit of Paskwelina Gichunge M'Inoti sworn on 5.3.2024. It is averred that the date to deliver the judgment was set in the presence of the party's advocates, no follow-up was made for the outcome, no follow-up should not be used as an excuse for inaction, the suit arose out of a judgment in Meru H.C Succession Cause No. 480A of 2010 delivered on 31.5.2018, the applicants took four months to file the lower court suit and a delay of two months is inordinate and calculated to frustrate the respondent. Further, the respondent term the application as frivolous, vexatious and an abuse of the court process since the memorandum of appeal raises no arguable issues.

4. Section 79G of the *Civil Procedure Act* grants the court discretion to admit an appeal out of time if there are sufficient reasons for not filing it on time. In *Leo Sila Mutiso vs Rose Hellen Mwangi* (1999) 2 E.A 231, the court observed that an applicant must give reasons for the delay to be entitled to the

exercise of discretion. In *Nicholas Kiptoo Arap salat vs IEBC* (2013) eKLR, the court observed that an extension of time is not a right of a party but discretionary in nature to be exercised on a case-to-case basis. The court set out some of the parameters to consider as the reasons for the delay; prejudice to the opposite party; the public interest in the issue; length of the delay and the interests of justice.

5. In this application, the delay is for two months, whereas the law does not set the minimum or maximum amount of delay. It all depends on the circumstances of each case. In this application, the reasons for not attending the judgment delivery date or making a follow-up are not given. There is no indication if the applicants applied for a copy of the judgment and the proceedings during the period of the delay or so soon after the delivery of the judgment.

6. The burden of proof is on the applicants to satisfy the court to exercise discretion in their favour. It is not enough to allege grave injustice or irreparable loss of land without showing why the applicants were not vigilant in agitating for their right of appeal.

7. Blaming the court or the registry without demonstrating readiness on the part of the applicants is not enough. A case belongs to the parties, and so they should make a follow-up on the next cause of action, once a judgment is delivered. Court timelines are meant to be adhered to, and where there is an omission, parties must own up and seek the discretionary powers of the court to extend time, based not on sympathy but on material reasons for the delay. The respondent has demonstrated the past conduct of the applicants in delaying the cause of justice which is prejudicial to her.

8. I find no basis to extend the time for the intended appeal. 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

HON. C K NZILI

JUDGE

In presence of

C.A Kananu

1st applicant in person

Kariuki for Kiara for applicant

Mr. Muriira for the respondent