



Owiti & another v Owiti & another (Environment and Land Appeal E020 of 2022) [2024] KEELC 4873 (KLR) (19 June 2024) (Ruling)

Neutral citation: [2024] KEELC 4873 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
ENVIRONMENT AND LAND APPEAL E020 OF 2022**

**M SILA, J
JUNE 19, 2024**

BETWEEN

JUSTINA AUMA OWITI 1ST APPELLANT

SUSAN OKETCH OWITI 2ND APPELLANT

AND

PETER NG'OLA OWITI 1ST RESPONDENT

JACOB OGILA OWITI 2ND RESPONDENT

RULING

(Application to have appeal dismissed; appellants given 45 days from 16 November 2023 to file and serve the record of appeal; record filed on 19 January 2024; argument of applicants that the record was filed out of time; computation of time; period between 21 December and 13 January of the following year excluded; record of appeal was thus filed within time; application dismissed)

1. The application herein is that dated 24 January 2024 but filed on 23 February 2024 by the respondents and it seeks the following orders :
 - i. That this Honourable Court be pleased to issue a declaratory order that the instant appeal stood dismissed on 30 December 2023 as per the ruling of this Court delivered on 16 November 2023 which granted the appellants 45 days to file record of appeal failure to which the appeal stands dismissed.
 - ii. That costs of the application be provided for.
 - iii. Any other relief that the Honourable Court deems fit and appropriate to grant.
2. The application is supported by the affidavit of Peter Owiti, the 1st respondent in this appeal. He has deposed that on 16 November 2023, this matter came up before this court for notice to show cause



why the appeal should not be dismissed for want of prosecution. That the appellants requested for 14 days to file and serve the record of appeal; that upon consideration the court ordered the appellants to file and serve their record of appeal within 45 days failure of which the appeal would stand dismissed. It is deposed that the matter was mentioned before the Deputy Registrar on 24 January 2024 and that no record of appeal had been filed despite counsel for the appellant indicating that he had filed the record of appeal on 19 January 2024. He avers that as per the court order of 16 November 2023, the appeal ought to have been filed within 45 days which lapsed on 30 December 2023.

3. The appellants have opposed the motion through a replying affidavit sworn by Justina Auma Owiti, the 1st appellant. She avers that she is aware of the directions given on 16 November 2023 to file the record of appeal within 45 days failure to which the appeal would stand dismissed. She avers that the time period between 21 December 2023 and 13 January 2024 is not computed pursuant to Order 50 Rule 4. She asserts that the time lapsed on 22 January 2024 and that the record of appeal was filed on 19 January 2024 which was within time.
4. I have considered the application. It is true that on 16 November 2023 that the appeal came up for notice to show cause why it should not be dismissed. The court granted the appellants 45 days to file and serve the record of appeal or else the appeal would stand dismissed. It is also true that Order 50 Rule 4 excludes the period between 21 December to 13 January of the following year from computation of time. My assessment of 45 days, excluding the period between 21 December 2023 to 13 January 2024, brings me to 24 January 2024. Despite the applicants claiming that there was no record of appeal, the file herein shows that there is a record of appeal filed on 19 January 2024. In my opinion, the record of appeal was therefore filed within time.
5. There is no substance in this application and it is hereby dismissed with costs.
6. Orders accordingly.

DATED AND DELIVERED THIS 19 DAY OF JUNE 2024

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT AT MIGORI

