



**Kirrinkai v Mwai & 2 others (Environment and Land Miscellaneous Application E011 of 2023) [2024] KEELC 5534 (KLR) (25 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5534 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E011 OF 2023  
LC KOMINGOI, J  
JULY 25, 2024**

**BETWEEN**

**WILLIAM TETO KIRRINKAI ..... APPLICANT**

**AND**

**JOSEPH MWAI ..... 1<sup>ST</sup> RESPONDENT**

**JOHN KAMAU ..... 2<sup>ND</sup> RESPONDENT**

**COUNTY GOVERNMENT OF KAJIADO ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. This is the Notice of Motion dated 8<sup>th</sup> September 2023 brought under; Sections 13 (1) & (2), 16A (1) & (2) and 19 (1) & (2) of the *Environment and Land Court Act*, Sections 1A, 1B, 3A, 63 (e) & 95 of the *Civil Procedure Act*, Order 43 rule 1, 42 rules (6) (2) & 51 (1) of the *Civil Procedure Rules* 2010, Articles 48, 50 and 159 (2) (d) of *the Constitution* (Under Order 43 Rule 1, Order 51 Rule 1, and all other Enabling Provisions of the Law.
2. It seeks Orders;
  1. Spent.
  2. Spent.
  3. That this Honorable Court be pleased to issue orders of stay of execution of the Judgement and decree and all consequential orders in Kajiado CM'S ELC Case No. 243 of 2018 pending the hearing and determination of the intended Appeal.
  4. That this Honorable Court be pleased to grant an extension of time for such a period of time as this Honourable court may deem fit and proper to grant for the Applicants to lodge and serve Memorandum of Appeal against the entire Judgment and decree of the Chief Magistrates



court at Kajiado (the Hon. L.L. Gicheha, CM) dated and delivered virtually on 31<sup>st</sup> day of July 2023 in Kajiado CM'S ELC Case No. 243 of 2018.

5. That costs of this application to abide the outcome of the intended appeal.
3. The grounds are on the face of the application and are set out in paragraphs a to m.
4. The Application is supported by the affidavit of William Teto Kirrinkai and John Kamau, the Applicants herein sworn on the 8<sup>th</sup> September 2023.
5. The Notice of Motion is opposed. There is a Replying Affidavit sworn by Joseph Mwai, the 1<sup>st</sup> Respondent, sworn on the 31<sup>st</sup> October 2023.
6. On the 8<sup>th</sup> November 2023 the court with the consent of the parties directed that the Notice of Motion be canvassed by way of written submissions.
7. I have considered the Notice of Motion, the response thereto and the rivals submissions. The issue for determination is whether the Application is merited.
8. It is not in dispute that the Judgment in the lower court was delivered on the 31<sup>st</sup> July 2023 in the absence of the Defendants and or their counsel. I could not immediately establish whether they were aware of the Judgement date.
9. This application is dated 8<sup>th</sup> September 2023. I find that it has been brought without undue delay.
10. Section 79 G of the *Civil Procedure Act* provides;

“Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having [Issue 1] 34 [Rev. 2012] Civil Procedure CAP. 21 been requisite for the preparation and delivery to the appellant of a copy of the decree or order: Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.”

11. Section 16 A1 & 2 of the *ELC Act* provides that;
  - (1). “All appeals from subordinate courts and local tribunals shall be filed within a period of thirty days from the date of the decree or order appealed against in matters in respect of disputes falling within the jurisdiction set out in Section 13 (2) of the *Environment and Land Court Act*, provided that in computing time within which the appeal is to be instituted, there shall be excluded such time that the subordinate court or tribunal may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order.”
  - (2). “An appeal may be admitted out of time if the appellant satisfies the court that he had a good and sufficient cause for not filing the appeal in time.”
12. I have gone through the affidavit in support and the reasons advanced for the delay in filing the appeal. I am satisfied that the Applicants have demonstrated good and sufficient cause.
13. It is on record that the Applicants are in occupation of the suit property.
14. I find merit in this application and I grant the orders sought namely;
  - a. That the time within which to file and serve the Memo of Appeal is hereby extended and the Draft Memo of Appeal be deemed to be properly filed upon payment of the requisite fees.



b. That the issue of stay will be canvassed once the Appeal is filed.

c. That Applicants do bear costs of this application.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 25TH DAY OF JULY 2024.**

**L. KOMINGOI**

**JUDGE.**

In The Presence Of:

N/A for the Applicants.

N/A for the Respondents.

Court Assistant – Mutisya.

