



REPUBLIC OF KENYA



KENYA LAW
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**Bongoi v Barno & 2 others (Land Case E023 of 2023)
[2024] KEELC 5319 (KLR) (18 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5319 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
LAND CASE E023 OF 2023
EO OBAGA, J
JULY 18, 2024**

BETWEEN

KIMARU KIPLANGAT BONGOI PLAINTIFF

AND

CHRISTOPHER KIBET BARNO 1ST DEFENDANT

JACKSON KIPROTICH KEMBOI 2ND DEFENDANT

UASIN GISHU COUNTY LAND REGISTRAR 3RD DEFENDANT

RULING

1. This is a ruling in respect of a Notice of motion dated 1.3.2024 in which the 2nd Defendant seeks leave of this court to appeal against the court's ruling of 29.2.2024. The application is expressed to be brought under the provisions of order 43 Rules (1) and (2) of the [Civil Procedure Rules](#) and section 1A, 1B, 3A and 75 of the [Civil Procedure Act](#).
2. The Applicant contends that he has filed a notice of Appeal against the court's ruling delivered on 29.2.2024 in which he seeks the court's interpretation on the law of [Limitation of Actions Act](#) and Res judicata. He states that he believes that he requires leave of court before he can pursue the appeal.
3. The Plaintiff/Respondent had filed a suit against the Applicant and two other parties. He also filed an application seeking an injunction against the Defendant/Respondent. Before the application for injunction could be heard, the Applicant filed a notice of Preliminary objection against the Respondent's application and the entire suit on the ground that both the suit and the application offended Sections 7 of the [Civil Procedure Act](#) and Section 4(1) (a) of the [Limitation of Actions Act](#).
4. In a ruling delivered on 29.2.2024, the court upheld the preliminary objection against the Respondent's application which was found to be res judicata. The preliminary objection against the



Respondent's suit on the ground of Limitation was however dismissed. The Applicant now contends that he requires leave of the court to pursue an appeal against the court's ruling.

5. The Applicant's application was opposed by the Respondent based on a replying affidavit sworn on 6.6.2024. The Respondent contends that the Applicant is intent on pursuing a frivolous appeal which will delay the finalization of the suit and that the court's interpretation of the issue of Res-judicata and Limitation of Actions was arrived at after sound reasoning and following established principles.
6. I have considered the Applicant's application, the opposition to the same by the Respondent as well as the oral submissions during the hearing of the application. The only issue for determination is whether the Applicant requires leave of this court to appeal against the ruling of 29.2.2024.
7. Order 43 Rules (1) and (2) of the Civil Procedure Rules provides as follows:-
 1. An appeal shall lie as of right from the following Orders and rules under the provisions of section 75 (1) (h) of the Act—

Order 1 (parties to suits); (b) Order 2 (pleadings generally); (c) Order 3 (frame and institution of suit); (d) Order 4, rule 9 (return of plaint); (e) Order 7, rule 12 (exclusion of counterclaim); (f) Order 8 (amendment of pleadings); (g) Order 10, rule 11 (setting aside judgment in default of appearance). (h) Order 12, rule 7 (setting aside judgment or dismissal for non-attendance); (i) Order 15, rules 10, 12 and 18 (sanctions against witnesses and parties in certain cases); (j) Order 19 (affidavits); (k) Order 22, rules 25, 57, 61(3) and 73 (orders in execution); (l) Order 23, rule 7 (trial of claim of third person in attachment of debts); (m) Order 24, rules 5, 6 and 7 (legal representatives); (n) Order 25, rule 5 (compromise of a suit); (o) Order 26, rules 1 and 5(2) (security for costs); (p) Order 27, rules 3 and 10 (payment into court and tender); (q) Order 28, rule 4 (orders in proceedings against the Government); (r) Order 34 (interpleader); (s) Order 36, rules 5, 7 and 10 (summary procedure); (t) Order 39, rules 2, 4 and 6 (furnishing security); (u) Order 40, rules 1, 2, 3,7 and 11 (temporary injunctions); (v) Order 41, rules 1 and 4 (receivers); (w) Order 42, rules 3, 14, 21, 23 and 35 (appeals); (x) Order 45, rule 3 (application for review); (y) Order 50, rule 6 (enlargement of time); (z) Order 52, rules 4, 5, 6 and 7 (advocates); (aa) Order 53 (judicial review orders).
 2. An appeal shall lie with the leave of the court from any other order made under these Rules.
8. Section 75 of the *Civil Procedure Act* provides as follows: -

“An appeal shall lie as of right from the following orders, and shall also lie from any other order with the leave of the court making such order or of the court to which an appeal would lie if leave were granted— (a) an order superseding an arbitration where the award has not been completed within the period allowed by the court; (b) an order on an award stated in the form of a special case; (c) an order modifying or correcting an award; (d) an order staying or refusing to stay a suit where there is an agreement to refer to arbitration; [Rev. 2012] CAP. 21 Civil Procedure 33 [Issue 1] (e) an order filing or refusing to file an award in an arbitration without the intervention of the court; (f) an order under section 64; (g) an order under any of the provisions of this Act imposing a fine or directing the arrest or detention in prison of any person except where the arrest or detention is in execution of a decree; (h) any order made under rules from which an appeal is expressly allowed by rules. (2) No appeal shall lie from any order passed in appeal under this section.”
9. Order 43 (4)(2) is the one which subjects the appeals from orders to the provisions of Order 43. The Applicant was at liberty to apply orally to court for leave to appeal against the ruling of 29.2.2024 or



make a formal application within 14 days of the making of an order. The court's order was made on 29.2.2024. This application was made on 1.3.2024 which is within 14 days. The Applicant is entitled to a second opinion from a higher court. I therefore allow the Applicant's application dated 1.3.2024 in terms of prayer 2 and 3 of the said motion.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 18TH DAY OF JULY, 2024.

E. O. OBAGA

JUDGE

In the virtual absence of parties who were aware of the date of ruling.

Court Assistant –Laban

E. O. OBAGA

JUDGE

18th JULY, 2024

