



Anduru v Ayieta (Sued as legal representative of Hulder Kezia - Deceased) & 2 others (Environment and Land Miscellaneous Application E010 of 2024) [2024] KEELC 13755 (KLR) (29 October 2024) (Ruling)

Neutral citation: [2024] KEELC 13755 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E010 OF 2024
GMA ONGONDO, J
OCTOBER 29, 2024

BETWEEN

TOBIAS OBILO ANDURU APPLICANT

AND

PAMELA AYIETA (SUED AS LEGAL REPRESENTATIVE OF HULDER KEZIA - DECEASED) 1ST RESPONDENT

CHARLES OOKO TUKIKO (SUED AS THE LEGAL REPRESENTATIVE OF TUKIKO OCHIENG - DECEASED) 2ND RESPONDENT

WILFRIDA AKINYI ANDURU (SUED AS THE LEGAL REPRESENTATIVE OF ANDURU NDAGWA - DECEASED) 3RD RESPONDENT

RULING

1. By a Notice of Motion application dated 26th July 2024 pursuant to, *inter alia*, sections 13, 16A of the [Environment and Land Court Act](#) 2015 (2011) and Order 40 Rules 1, 2, 3 and 4 of the [Civil Procedure Rules](#) 2010, the applicant, Tobias Obilo Anduru through Mudeyi Okumu and Company Advocates, has sought the following orders;
 - a. This Honourable court be pleased to grant leave to the Applicant to file an Appeal against the said Decree dated 13th May 2024 out of time in terms of the Draft Memorandum of Appeal annexed hereto.
 - b. Cost of the applicant be provided for.
2. The application is founded upon the applicant's affidavit alongside grounds (a) to (h) stated on the face of the same. In summary, the applicant laments that he has been aggrieved by the trial court's decree dated 31st May 2024 and is desirous to appeal against it to this court in the interest of justice. That the



- suit plot number 22 within Migori Town is the only valuable asset to him. That his counsel on record at the time was negligent leading to this application and the delay to mount it is only two months.
3. The respondents did not respond to the application.
 4. On 30th July 2024, the court directed that the application be heard by written submissions.
 5. The parties failed to file and serve submissions in respect of the application.
 6. On that account, is there merit in the application?
 7. I take into account that Order 50 of the Civil Procedure Rules 2010 provides for time. Sections 75 and 79G of the Civil Procedure Act Chapter 21 Laws of Kenya provide for appeals from orders and time for filing of appeals from subordinate courts respectively; see also Orders 42 and 43 of the Civil Procedure Rules 2010.
 8. The litigants and their professional advisors are the best judges of their affairs as observed in Butt v Rent Restriction Tribunal (1979) eKLR.
 9. Besides, mistake of counsel should not be visited upon a client; see Shabir Din v Ram Parkash Anand (1955) EACA Volume 22 page 48.
 10. Due to mistake of counsel, the applicant has given satisfactory and plausible reasons for extension of time sought in the application; see Naomi Wangechi Gitonga & 3 others v Independent Electoral and Boundaries Commission and 17 others (2018) eKLR.
 11. Moreover, the applicant intends to lodge an appeal as per the draft memorandum of even date. No doubt, he has the right of appeal as held in Butt case (supra) and enshrined in Articles 25 (c) , 48 and 50 (10 of the Constitution of Kenya 2010.
 12. To that end, it is the finding of this court that the application is firm, cogent and merited in the circumstances.
 13. Thus, the application dated 26th July 2024, is hereby allowed in terms of order number 3 for leave to file an appeal out of time in this application. So, the applicant's counsel to lodge an appeal within the next thirty days from this date in default, the said order to lapse automatically without any further order of this court being necessary.
 14. There shall be no orders as to costs herein.
 15. It is so ordered.

DATED AND DELIVERED AT MIGORI THIS 29TH DAY OF OCTOBER 2024

G M A ONGONDO

JUDGE

In the Presence of;

1. Mr. J Kisera instructed by Mudeyi Okumu learned counsel for the applicant
2. Mr. Sam Onyango learned counsel for the respondents
3. Mr. Tom Maurice, court assistant

