



REPUBLIC OF KENYA



**Kilonzo v Ndirangu (Environment and Land Miscellaneous Application E005 of 2024) [2024] KEELC 6793 (KLR) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6793 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E005 OF 2024  
JM MUTUNGI, J  
OCTOBER 17, 2024**

**BETWEEN**

**MICHAEL MWANZIA KILONZO ..... APPLICANT**

**AND**

**JANE WAHITO NDIRANGU ..... RESPONDENT**

**RULING**

1. The Applicant vide a Notice of Motion application dated 29<sup>th</sup> February, 2024 prays for the following orders:-
  - a. Spent
  - b. Spent
  - c. That there be a stay of execution/implementation of the ruling of the Trial Court in Wang'uru MELC misc. Application no E005 of 2023 delivered on 23<sup>rd</sup> January 2024 pending the hearing and determination of the Intended Appeal.
  - d. That this Honourable Court be pleased to grant the Applicant leave to appeal out of time against the Ruling of Hon. Martha Opanga, Principal Magistrate in Wang'uru MELC misc. Application E005 of 2023 delivered on 23<sup>rd</sup> January 2024.
  - e. That costs of this application be provided for.
2. The application is predicated on the grounds outlined in the body of the application and in the Supporting Affidavit of the Applicant. The Applicant states that in the Ruling delivered by the Trial Court on 23<sup>rd</sup> January 2024, he was ordered to vacate land parcel Mbeere/Wachoro/854 (suit land). He avers that he had lived on the suit land since 1979, had developed the land, and believed that any eviction from the suit land before he filed his appeal would be prejudicial. He explained that he did not file his appeal within the prescribed thirty-day period because he did not have enough funds to



seek legal representation and services. He stated that the delay in filing the appeal was not deliberate but due to the lack of legal representation. The Applicant asserted that for the interest of Justice, it was essential that a stay of execution is granted to allow him to file his appeal, which he averred had high chance of success and would not cause prejudice to the Respondent if granted.

3. The Respondent filed a Replying Affidavit dated 22<sup>nd</sup> May 2024 in opposition to the application. The Respondent stated the Applicant was duly evicted from the suit land on 27<sup>th</sup> March, 2024 under the supervision of the OCS Karaba Police Station whereas the application by the Applicant dated 29<sup>th</sup> February, 2024 and the order for stay were served on the Respondent's Advocates electronically on 28<sup>th</sup> March, 2024 at 2.09 Pm after the eviction of the Applicant had been affected the previous day. The Respondent averred that no explanation was given for the delay in effecting service of the application and equally there was no good reason given for failure to file the Appeal within the prescribed period.
4. The Respondent further averred the Applicant having been represented before the Lower Court by the Firm of T. M. Kuria & Co. Advocates, the current Firm of Advocates are not properly on record for the Applicant having not complied with Order 9 Rule 9 of the Civil Procedure Rules which renders the Applicant's application incompetent. At any rate the Respondent contended the Draft Memorandum of Appeal did not disclose any arguable appeal and/or any good grounds of appeal.

Section 16A of the Environment and Land Court Act no 19 of 2011 provides for Appeals from Subordinate Courts as follows:-

16A Appeals from subordinate

- (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.
5. From the above provision it is clear where the Appeal is not filed within the prescribed period the Appellant is required to satisfy the Court that there was good and sufficient cause for the delay.

Section 79G of the Civil Procedure Act echoes the provisions of Section 16A of the Environment and Land Court Act and provides for Appeals from the Subordinate Courts as follows:-

79G. Time for filing appeals from subordinate courts 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 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.

6. The enabling legal provisions Section 16A of the Environment and Land Court Act and Section 79G of the Civil Procedure Act give the Court unfettered discretionary power to extend and/or enlarge the



period for filing an appeal but the Court in exercising its discretion under these provisions has to be satisfied by the Applicant that he had good and sufficient cause for not filing the Appeal on time.

7. The factors that guide Courts in exercising the discretion whether to extend time to file an appeal out of time were laid out by the Court of Appeal in the Case of *Thuita Mwangi v Kenya Airways Ltd* [2003] eKLR. They include the following:
  - i) The period of delay;
  - ii) The reason for the delay;
  - iii) The arguability of the appeal;
  - iv) The degree of prejudice which could be suffered by the Respondent if the extension is granted;
  - v) The importance of compliance with time limits to the particular litigation or issue; and
  - vi) The effect if any on the Administration of Justice or public interest if any is involved.
8. The parties canvassed the application by way of Written Submissions which I have duly considered.
9. In the matter before the Lower Court, the Applicant had filed a Miscellaneous application seeking the eviction of the Respondent which application was predicated on the provisions of Section 152 A, B, E and F of the *Land Act*, 2012. After hearing the application which was contested by the Applicant the Learned Trial Magistrate allowed the application in the following terms:-

“Having considered the both Motions I invoke Section 152F (2) (a) of the *Land Act* and order the Respondent to vacate LR Mbeere/Wachoro/6005 within one month of this Ruling failure to which eviction order do issue against him from LR Mbeere/Wachoro/6005. The Applicant is at liberty to appoint a Court Bailiff or Auctioneer to effect and execute the eviction order. The OCS Karaba Police Station to offer security in ensuring compliance of the orders above. The Applicant shall have the cost of this application.”
10. The eviction order against the Applicant was issued and was executed on 27<sup>th</sup> March, 2024 apparently before the Respondent was served with the Notice of Motion and the order for temporary stay which were served on the Respondent on 28<sup>th</sup> March, 2024 as per the evidence. The application for stay was therefore overtaken by events as there cannot be stay of that which has taken place. The Applicant sought to have the eviction stayed but he had already been evicted by the time the application and order were served. Prayer 3 of the application seeking stay pending the hearing and determination of the intended appeal is therefore incapable of being granted.
11. In the present matter the Ruling before the Lower Court was rendered on 23<sup>rd</sup> January, 2024 meaning the Applicant had upto 22<sup>nd</sup> February 2024 to lodge an appeal if he was dissatisfied with the Ruling. He did not do so but filed the instant application dated 29<sup>th</sup> February, 2024 on 1<sup>st</sup> March, 2024 but which he did not serve until 28<sup>th</sup> March, 2024. His explanation for the delay was that he lacked sufficient funds to engage the services of an Advocate to advise him in regard to filing the appeal.
12. While it could be true that the Applicant may have lacked sufficient funds to engage the services of a Legal Counsel to advise him, I have reservations that such would constitute a reasonable explanation to satisfy the Court under Section 16A (2) of the *Environment and Land Court Act*, 2011 or the proviso to Section 79G. I say so advisedly as if the reason of lack of funds was held to constitute “sufficient reason” in such applications, then Applicants invariably would have a valid reason for any delay as all an Applicant needed to state is that he lacked sufficient funds to take some required action. I believe the provisions under Order 33 of the *Civil Procedure Rules* that allow filing of suits by paupers were



intended to cater for situations where a litigant lacked means to institute Court proceedings. The Applicant could not by any means be classified as a pauper and could not benefit from the provisions of Order 33 provisions of the Civil Procedure Rules. I am in the premises not satisfied that the Applicant gave a satisfactory explanation for the delay in filing the Appeal.

13. It is noteworthy that Section 152 A – F of the Land Act, 2012 does not provide the procedure for approaching the Court, and the Respondent approached the Court vide a Miscellaneous application seeking an order for eviction of the Applicant. The Court entertained the application and allowed the same. The order of eviction issued by the Lower Court having been executed the Intended Appeal, even if successful, would only be for academic purpose as it would not undo what had been done. The Draft Memorandum of Appeal quite clearly merely faults the procedure that was followed to adjudicate what the Applicant claims was a ownership dispute of LR Mbeere/Wachoro/6005. The Applicant failed to move timeously to file the appeal within time and possibly obtain a stay of the order of execution of the eviction order which would have given the Court an opportunity to interrogate the merits of the Ruling of the Lower Court. As matters stand, the Applicant came to Court too late when the horse had already bolted, if I may use a metaphor.
14. There is yet another issue as regards the Applicant's instant application. The Applicant as observed earlier was in the Lower Court represented by another Firm of Advocates other than the Firm of Okero Ombachi Advocates now on record in the instant proceedings. The Respondent has contended the Firm of Okero Ombachi Advocates are not properly on record for the Applicant, a contestation that the Firm of Okero Ombachi Advocates have not responded to. Under Order 9 Rule (9) and (10) of the Civil Procedure Rules whenever there is a change of Advocate after Judgment such change of Advocate has to be sanctioned by the Court.

Order 9 Rules (9) and (10) provide as follows:-

Order 9(9) Change to be effected by order of Court or consent of parties.

9. When there is a change of Advocate, or when a party decides to act in person having previously engaged an Advocate, after Judgment has been passed, such change or intention to act in person shall not be effected by order of the Court—
  - (a) upon an application with notice to all the parties; or
  - (b) upon a consent filed between the outgoing Advocate and the proposed incoming Advocate or party intending to act in person as the case may be.
- (10) An application under Rule 9 may be combined with other prayers provided the question of change of Advocate or party intending to act in person shall be determined first.

15. It is not clear how the Applicant's current Advocates on record came to be on record. There is neither a Notice of change of Advocate or an order of the Court permitting them to come on record and/or a consent signed between the previous Advocates and themselves to come on record on behalf of the Applicant. The Court in the circumstances holds that the Firm of Okero Ombachi Advocates are not properly on record for the Applicant and are strangers in the proceedings. Any pleadings filed by the Firm are incompetent and liable to be struck out.
16. In the premises it is my determination that the Applicant's Notice of Motion application dated 29<sup>th</sup> February 2024 is devoid of any merit and the same is dismissed with costs to the Respondent.  
It is so ordered.



**RULING DATED SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 17TH DAY  
OF OCTOBER 2024**

**J. M. MUTUNGI**

**ELC - JUDGE**

