



REPUBLIC OF KENYA



Kirinyaga County Government v Karanja (Miscellaneous Application E013 of 2022) [2024] KEELC 6805 (KLR) (17 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6805 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
MISCELLANEOUS APPLICATION E013 OF 2022**

**JM MUTUNGI, J
OCTOBER 17, 2024**

BETWEEN

KIRINYAGA COUNTY GOVERNMENT APPLICANT

AND

PETER MELK KARANJA RESPONDENT

RULING

1. The Applicant *vide* a Notice of Motion application dated 8th August, 2022 prays for the following orders:-
 1. Spent.
 2. That this Honourable Court be pleased to grant the Applicant leave to appeal against the judgment of Hon. Cheruto C. Kipkorir (PM) delivered on 13th April 2022 in *Kerugoya Civil Case No. 31 of 2019*.
 3. That upon grant of prayer 2 above, this Honourable Court be pleased to deem the annexed draft appeal as duly filed upon payment of the requisite fees.
 4. That upon grant of prayer 2 above, this Honourable Court be pleased to order that there be a stay of execution of the Judgment and Decree in *Kerugoya Civil Case No. 31 of 2019* pending the hearing and determination of this appeal.
 5. That upon grant of prayer 2 above, this Honourable Court be pleased to order that there be a stay of execution of the judgment and decree in *Kerugoya Civil Case No. 31 of 2019* pending the hearing and determination of this appeal.
 6. That cost of this application be provided for.



2. The application is based on the grounds stated in the body of the application and on the Supporting Affidavit of the Applicant's County Attorney dated 8th August 2022. The Applicant states that in the Judgment delivered by the Trial Court on 13th April 2022, it was ordered to pay a sum of Kshs. 1,800,000/= as compensation for the illegal transfer of Plot 228A Kutus. The Applicant asserts that it had not illegally transferred the said plot and that the said plot arose from the subdivision of land parcel Kabare/Nyangati/152, which the Applicant had acquired from Machai Cewa. The Applicant further states that the Plot No. 228A Kutus was originally allocated to Francis Njogu Kanyenye, which was later transferred to E. Macharia who later transferred the plot to the Respondent. The Applicant further states that upon conducting investigations, it was discovered that Machai Cewa had not surrendered the original title of Kabare/Nyangati/152 and had subdivided the parcel of land into five portions, leading to the closure of the title deed. The Applicant adds that it consequently placed restrictions and cautions on the original title and its resultant subdivisions, which were allegedly removed without any Court Order. Further the Applicant stated that efforts were being made to address issues arising from Muchai Cewa's failure to surrender the title. The Appellant states that it stands to suffer financial loss if the Judgment is enforced, given the County Government's budget constraints. Further, the Applicant avers that the delay in filing the appeal was attributable to the County Attorney's Maternity Leave and the loss of the file at the Registry.
3. The Respondent filed on 26th April 2024 an undated Replying Affidavit in opposition to the application. The Respondent asserted the Applicant had shown disinterest in pursuing the application since it was filed in 2022. The Respondent stated that despite being in regular communication with the Applicant, he had not been notified about the application and only learnt about it when ELC Misc. App. No. 15 of 2023 that the Respondent had filed for enforcement of the decree was set for hearing. As the decree was for a monetary award, the Respondent asserted should the Court to be inclined to allow the Applicant's application, the same should on the condition that the total decretal sum be deposited in Court.
4. Any party aggrieved by a Judgment has an automatic right of Appeal and requires no leave of the Court. Such an Appeal however, has to be filed within the prescribed timelines. 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 courts

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. The above provision clearly states that if the Appeal is not filed within the prescribed period, the Appellant must satisfy the Court that there was good and sufficient cause for the delay.
6. 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.

7. In the instant matter, the Subordinate Court issued the Judgment on 13th April 2022. The present application was filed on 22nd August 2022, nearly 4 ½ months or 132 days after the Judgment was delivered. The application as presented prays for leave to be granted to appeal against the Judgment of Hon. Cheruto C. Kipkorir delivered on 13th April 2022. This clearly is a misconception since no leave is required to appeal against a Judgment. A party has an automatic right of appeal against a Judgment. It does appear however, the Applicant's intention was to seek leave to appeal out of time as the Applicant has endeavoured to offer an explanation as to why the Appeal was not lodged within the prescribed period. The Applicant has explained that it's Attorney was on maternity leave and was therefore not able to instruct the Advocate on record to file the Appeal. Whether the explanation offered was reasonable is debatable.
8. The enabling legal provisions, Section 16A of the *Environment and Land Court Act* 2011 and Section 79G of the *Civil Procedure Act*, give the Court the power to extend and/or enlarge the period for filing an appeal. However, in exercising its discretion under these provisions, the court has to be satisfied by the Applicant that he had good and sufficient cause for not filing the Appeal on time. The Applicant asserts that it could not file the appeal in time because its County Attorney had taken maternity leave and, as a result, could not provide instructions to its advocate on record to file the appeal. The Court in the premises has to consider whether the fact of the Applicants Attorney being on maternity leave constituted a reasonable explanation for the delay to warrant exercise of discretion in its favour.
9. The principles to be considered in exercising the Court's discretion on whether or not to enlarge the time to file an appeal were set out in the Case of *Leo Sila Mutiso v Rose Hellen Wangeri Mwangi* Civil Appeal 255/ 1997, the Court, in considering the exercise of discretion to extend time, held as follows: -

“It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general, the matters which this court takes into account in deciding whether to grant an extension of time are first, the length of the delay. Secondly, the reason for the delay; thirdly (possibly) the chances of the appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the respondent if the application is granted.”
10. The Court of Appeal in the Case of *Andrew Kiplagat Chemaringo –vs- Paul Kipkorir Kibet* (2018) eKLR reiterated that an Applicant who seeks an extension of time to file an appeal out of time must offer a reasonable explanation for the delay to the satisfaction of the Court. The Court stated thus:-

“The Law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the Court flow of discretionary favour. There has to be valid and clear reasons upon which discretion can be favourably exercisable.”
11. The explanation given by the Applicant in the instant Case, that its County Attorney was away on maternity leave in my consideration cannot pass the test of reasonableness. Ordinarily maternity leave



is planned unless there is an emergency. The office of the County Attorney would be expected to run without a break such that even in the case of the holder of the office proceeding on either annual or maternity leave as in the instant case, the office continues to run. The Applicant in the circumstances should have arranged such that the functions of the County Attorney's office were appropriately executed by another person for the period the County Attorney was absent.

12. In the premises I find no merit in the Applicant's Notice of Motion dated 8th August, 2022 and the same is accordingly dismissed with costs to the Respondent.

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

J. M. MUTUNGI

ELC - JUDGE

