



Kugun v Sum & another; Sang & 6 others (Interested Parties) (Environment & Land Case 233 of 2012) [2024] KEELC 13843 (KLR) (16 December 2024) (Ruling)

Neutral citation: [2024] KEELC 13843 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 233 OF 2012
EO OBAGA, J
DECEMBER 16, 2024**

BETWEEN

JOSEPH KIBUNGEI KUGUN PLAINTIFF

AND

JOHN CHERUIYOT SUM 1ST DEFENDANT

THOMAS CHERUIYOT MAIYO 2ND DEFENDANT

AND

BENJAMIN SANG INTERESTED PARTY

KENNETH SANG INTERESTED PARTY

JULIUS LIMO INTERESTED PARTY

SARAH JOB SAINA INTERESTED PARTY

PAULINA JEPTEKENY CHEPGOK INTERESTED PARTY

SAMUEL KIPSAINA INTERESTED PARTY

JOSHUA KIPKEMBOI TUWEI INTERESTED PARTY

RULING

1. This is a ruling in respect of a notice of motion dated 19.8.2024 in which the Plaintiff/Applicant seeks the following orders:-
 1. Spent.
 2. That the Honourable court be pleased to grant the Applicant leave to file and serve the notice of appeal out of time against the judgement of Hon. A. O. Ombwayo in Eldoret No. 233 of 2012.



3. That the Honourable court be pleased to grant leave to the Applicant to file appeal to the Court of Appeal out of time against the judgement of Justice A. O. Ombwayo in Eldoret ELC No. 233 of 2012.
 4. That the Honourable court be pleased to grant an order of stay of execution of judgement delivered on 18th November, 2022 and all other orders emanating therefrom pending the hearing and determination of this application.
 5. That costs of this application be provided for.
2. The Applicant contends that judgement was delivered herein on 18.11.2022. As he was in the process of preparing to pursue an appeal, he was diagnosed with hypertension which took a toll on him. He was on and off hospital. The condition resulted in severe headache, confusion and sometimes poor eyesight.
 3. He states that he is now well and ready to pursue his appeal. It is on this basis that he is seeking leave of court to file and serve notice of appeal out of time as well as the appeal.
 4. The Applicant's application is opposed by the 1st and 2nd Interested parties/Respondents based on a replying affidavit sworn on 13.9.2024. The Respondents contend that this court does not have jurisdiction to extend time as that is the preserve of the Court of appeal.
 5. The Respondents further argue that the Applicant has not sufficiently explained why he did not file the appeal in time as his only evidence is a medical report which is general.
 6. The parties were directed to file written submissions in respect of the application. The Applicant filed his submission on 26.9.2024. The Applicant submitted that whether to grant extension to file an appeal or not is discretionary. He relied on the case of *Omar Sharie -vs- Mariam Rusbe Yara* (2020) eKLR where the Court of Appeal stated as follows:-

“It is now settled that the decision whether or not to extend time for appealing is essentially discretionary.”
 7. The Applicant also relied on the case of *Thuita Mwangi -Vs- Kenya Airways Limited* 2003 eKLR and *Nicholas Kiptoo Arap Korir Salat -vs- IEBC* (2014) eKLR which set out the factors to be considered in an application for extension of time. The factors include the period of delay, the reason for delay, the arguability of the appeal, the prejudice which could be caused/suffered by the Respondent if extension is granted, the importance of compliance with time limits to particular litigation or issue and the effect if any on the administration of justice or public interest if any is involved.
 8. The 1st and 2nd Interested parties filed their submission dated 7.10.2024. They cited the case of *Owners of the Motor Vessel "Lilian S" -vs- Caltex Oil (Kenya) Ltd* (1989) eKLR which states that if a court has no jurisdiction, it should down its tools.
 9. The Respondents also submitted that the Applicant has not given sufficient evidence as to why he did not file an appeal in time. They submitted that the Applicant only annexed a medical report to his application.
 10. I have considered the Applicant's application as well as the opposition to the same by the Respondents. The issues which emerge for determination are firstly whether this court has jurisdiction to entertain this application and secondly whether the Applicant has demonstrated that he is entitled to extension of time to appeal.



11. The Applicant is seeking extension of time to file an appeal to the Court of Appeal. The Applicant has sought to rely on order 50 Rule (6) of the Civil Procedure Rules. This rule does not give this court power to extend time for filing of appeal to the Court of Appeal. The power to extend time is provided for under Rule 4 of the Court of Appeal Rules 2022. This power can only be exercised by the Court of Appeal. This court therefore is without jurisdiction to deal with a matter touching on extension of time. The application should have been filed before the Court of Appeal.
12. The Applicant had also sought stay of execution under order 42 Rule 6. This relates to cases where an appeal has been filed. In the instant case, no appeal has been filed and therefore no order for stay of execution can be granted. In any case even if there was an appeal filed, no order of stay could be given as both the Applicant's suit and the suit by Interested parties were dismissed. This was therefore a negative order incapable of being stayed. Furthermore, the Applicant had sought stay of execution pending hearing and determination of the present application which orders were not granted in the first place. I do not have to consider the other issue as I do not have jurisdiction to deal with this application. Consequently, the Applicant's application is dismissed with no order as to costs as no costs were granted in the dismissed suits.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 16TH DAY OF DECEMBER, 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

16TH DECEMBER, 2024

