



Nyamatura v Land Registrar, Nyamira County & 3 others (Environment and Land Appeal E001 of 2023) [2023] KEELC 15862 (KLR) (28 February 2023) (Ruling)

Neutral citation: [2023] KEELC 15862 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT AND LAND APPEAL E001 OF 2023**

JM KAMAU, J

FEBRUARY 28, 2023

BETWEEN

RICHARD NYAMATURA APPLICANT

AND

LAND REGISTRAR, NYAMIRA COUNTY 1ST RESPONDENT

THE COUNTY LAND SURVEYOR, NYAMIRA 2ND RESPONDENT

THE HON. ATTORNEY GENERAL 3RD RESPONDENT

DANIEL OMBACHI MOGENI 4TH RESPONDENT

*(Being an Appeal from the Ruling of the Magistrate's Court at Nyamira
by Hon. M.C. Nyigei – PM delivered on the 9th day of November,
2022 or 26/11/2022 in Nyamira CMC ELC Case No. 74 of 2019)*

RULING

1. The Application before the Court is one dated January 16, 2023 for leave to file an Appeal out of time. The offending Ruling was delivered on November 9, 2022 by the Honourable Nyigei – PM in Nyamira Chief Magistrate's Court Case No ELC No 74 of 2019. After the Ruling was delivered, the Applicant applied for copies of proceedings and a certified Ruling to enable him appeal against the said Ruling. This was on November 10, 2022 and the letter bears the Court stamp of November 11, 2022. This was 2 days after the Ruling was delivered, which was within the time allowed by law. Although the Applicant does not indicate when he was invited to pay for the proceedings and Ruling or when he was informed that the proceedings and Ruling were ready for collection, he states that he was supplied with the essential documents on December 13, 2022. The 4th Respondent disputes that the offending Ruling was delivered on November 9, 2022 but on October 26, 2022. The other Respondents did not respond to this issue. At least the 4th Respondent has attached a copy of the Ruling which shows that the date of the delivery of the Ruling was October 26, 2022. Eventually, although I have not been given



any other document showing that there was another Ruling delivered on November 9, 2022 all the parties are in agreement that the Ruling was delivered on November 9, 2022 but the date shown in the copy of the Ruling from Court was in error.

2. Now that it is settled that the Ruling the Applicant intends to appeal against was delivered on November 9, 2022 did he apply for the proceedings and Ruling in good time? Section 79(g) of the [Civil Procedure Act](#) provides that: -

“Every appeal from a subordinate court to the High Court shall be filed within a period of 30 (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.”

3. The Act then gives the Court discretion to admit the Appeal out of time if good and sufficient reasons are adduced for not having filed the Appeal in time. I wish to proceed on the understanding that the correct date of the delivery of the Ruling was indeed delivered on November 9, 2022 and the requisite documents were requested for when the letter reached the Court, on November 11, 2022. The Applicant did so request for the documents within 2 Days after the Ruling. It took the Applicant 2 Days to make up his mind on lodging an Appeal, which is not inexcusable. The Court then prepared the proceedings, Ruling and Decree/Order immediately. The Applicant then took another 2 days to pay for and collect the proceedings and Ruling. 30 Days from the date of the Ruling expired on December 9, 2022. Under Order 50 Rule 4 of the [Civil Procedure Rules](#), the period between 21st December in any year and 13th January of the following year doesn't count in computation of filing timelines. Although the 30 Days timeline of filing an Appeal is not donated by the Rules but by the Substantive Act and the exclusion therefore does not apply here, I would consider that this period given by Order 50 Rule 4 presumes that members of the Bench and those of the Bar are on summer (Christmas) Holiday and therefore there is very limited or no activity taking place along the Court corridors.
4. I would therefore extend the privilege to the Applicant herein. If we were to exclude those days, then the Applicant was late in filing the Appeal from December 9, 2022 to December 21, 2022, 12 days and then from January 14, 2023 to the January 16, 2023 when he moved this court for leave, another 2 days making it a total of 14 days. If we compute the days from the time the Applicant received the proceedings and Ruling/Decree i.e. December 13, 2022 then he was late for 10 days. I will therefore use the Court's discretion to allow the Applicant further 7 days within which to file his intended Application. I will not delve into the merits or otherwise of the intended Appeal since time for that will come. This extension of time is premised only on the understanding that the Ruling was delivered on November 9, 2022 and not October 26, 2022.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 28TH DAY OF FEBRUARY 2023.

MUGO KAMAU

JUDGE

In the Presence of:

Court Assistant: Sibota

Applicant: Mr. Maroko

Respondents: Mr. Nderitu for 1st, 2nd & 3rd Respondents



Ms. Nyambati for 4th Respondent

