



**Mucece (Suing on behalf of the Estate of Mwamamba M'Mutuambugu)  
v Samwel & 3 others (Environment and Land Miscellaneous Application  
E014 of 2022) [2023] KEELC 15659 (KLR) (22 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 15659 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E014 OF 2022  
CK YANO, J  
FEBRUARY 22, 2023**

**BETWEEN**

**JOANINA MUCECE (SUING ON BEHALF OF THE ESTATE OF MWAMAMBA  
M'MUTUAMBUGU) ..... APPLICANT**

**AND**

**MOFFAT KIMATHI SAMWEL ..... 1<sup>ST</sup> RESPONDENT**

**SAMWEL BUNDI ..... 2<sup>ND</sup> RESPONDENT**

**ANNERITA GATAKAA MURIUNGI ..... 3<sup>RD</sup> RESPONDENT**

**MORRIS GUANTAI MUTHURI ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. For determination is the applicant's Notice of Motion dated May 23, 2022 brought under section 79G of the *Civil Procedure Act* and seeks leave to file an appeal out of time in respect of the ruling of Hon J Irura in Nkubu Civil case no 123 of 2014 delivered on December 15, 2021.
2. The application is based on the grounds thereon and is supported by the affidavit of Joanina Mucece Mwamba, the applicant sworn on MAY 23, 2022 in which the applicant has mainly given the history of the suit and attached a copy of letters of Administration of the estate of the late M'Mwamba Mutambugu, a copy of official search of land Parcel Abogeta/L-Chure/323, a copy of the orders given on February 28, 2018, copy of the ruling delivered on December 15, 2021, copy of official search of Land parcel Abogeta/L-Chure/274 and a copy of consent dated October 13, 2008 in Meru CMCC no 370 of 2008 as well as a draft copy of the memorandum of appeal. The applicant avers that the court ought to take into consideration the evidence mentioned therein, adding that she has an arguable appeal with high chances of success.



3. The 1<sup>st</sup> and 4<sup>th</sup> respondents opposed the application vide a replying affidavit sworn by Moffat Kimathi Samwel, the 1<sup>st</sup> respondent on June 22, 2022. In the replying affidavit, the 1<sup>st</sup> respondent has deposed *inter alia*, that the applicant has not demonstrated to the court why she should be allowed to appeal out of time and why she never appealed within the statutory limits instead of just claiming that the land belongs to her husband.
4. On September 26, 2022, the court granted the applicant leave to file a supplementary affidavit and the same was to be filed together with written submissions within 14 days, from that date, and the respondents were to file their submissions within 14 days of service by the applicant. The matter was fixed for mention on November 15, 2022 to confirm compliance with the said directions and to fix a date for ruling. However, by November 15, 2022, none of the parties had complied with the court's directions given on September 26, 2022 and a ruling date was given.
5. I have considered the application, the affidavit in support as well as the response. The issue for determination is whether the court should enlarge time to allow the applicant file her memorandum of appeal out of time.
6. The lower court delivered its ruling on December 15, 2021. The applicant ought to have filed appeal within 30 days from that date. The application herein was filed on May 23, 2022, which means that the applicant has a delay of about four (4) months, putting her outside the mandate of section 78G of the [Civil Procedure Act](#) which provides that-

“An appeal from the 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 satisfied the court that he had good and sufficient cause for not filing the appeal in time”
7. Section 95 of the same Act provides that-;

“where any period is fixed for granted by the court for the doing of any act prescribed or allowed by this Act, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.”
8. The relief sought is discretionary but the discretion must be exercised judiciously and upon defined principles of law, not capriciously or whimsically. Therefore, leave should only be granted when sufficient cause has been shown by the applicant to the satisfaction of the court.
9. I have looked at the grounds relied on by the applicant together with the affidavit in support of the application. The applicant has not given any reason for not filing appeal within the stipulated time. All that the applicant has done is to give the history of the matter and allege that she has an arguable appeal with high chances of success. Therefore no cause or sufficient cause has been shown by the applicant.
10. The delay by the applicant of about 4 months from the day the 30 days expired to the filing of this application in my view is inordinate and it was incumbent upon the applicant to give an explanation for such delay. I find that no good and sufficient cause has been given by the applicant for not filing the appeal in time as required by the provisions of section 79G of the [Civil Procedure Act](#). In the absence of any valid reason that has been offered by the applicant for the delay in filing an appeal, I am of the view that the applicant has not met the prerequisites given under Section 79G to warrant the court to exercise its judicial discretion in her favour. In this case, the applicant is merely inviting the court



to exercise its judicial discretion in her favour and therefore was obliged to demonstrate that there was good cause for not filing the appeal in time.

11. In my view no satisfactory explanation, and indeed no explanation has been given for the delay from December 15, 2021 up to May 23, 2022, a period of about five months. In the circumstances, and for the reasons I have given above, I find that the application is without merit. The notice of motion dated May 23, 2022 is dismissed with costs to the respondents.
12. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MERU THIS 22<sup>ND</sup> DAY OF FEBRUARY, 2023.**

**In presence of**

**C A Kibagendi**

**No appearance for applicant**

**No appearance for respondent**

**C K YANO**

**ELC JUDGE**

