



**Tsisaga v County Government of Kakamega (Environment & Land  
Case 34 of 2018) [2023] KEELC 16909 (KLR) (25 April 2023) (Ruling)**

Neutral citation: [2023] KEELC 16909 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA  
ENVIRONMENT & LAND CASE 34 OF 2018**

**DO OHUNGO, J**

**APRIL 25, 2023**

**BETWEEN**

**SOLOMON ONZERE TSISAGA ..... PLAINTIFF**

**AND**

**COUNTY GOVERNMENT OF KAKAMEGA ..... DEFENDANT**

**RULING**

1. By judgment delivered in this matter on January 25, 2023, the plaintiff's case was dismissed with no order on costs. Later, the plaintiff filed Notice of Motion dated February 28, 2023, seeking extension of time to file Notice of Appeal against the judgment. The application is supported by an affidavit sworn by the plaintiff.
2. The plaintiff deposed that he attended court on January 25, 2023 in the morning, but judgment was not read until the court went on lunch break. That his advocates paid for a certified copy of the judgment on February 3, 2023 and that it was supplied to them on February 20, 2023, upon which he knew that his case had been dismissed.
3. The defendant opposed the application through grounds of opposition dated April 13, 2023 in which it took the position that the court lacks jurisdiction to grant the orders, that the applicant is guilty of inordinate delay and that the application is bad in law.
4. The application was canvassed through written submissions which both parties duly filed.
5. I have carefully considered the application, the supporting affidavit, the grounds of opposition and the written submissions.



6. From the onset, I must allay the defendant's fears on jurisdiction. The court has jurisdiction pursuant to Section 7 of the [Appellate Jurisdiction Act](#) which provides:

The High Court may extend the time for giving notice of intention to appeal from a judgment of the High Court or for making an application for leave to appeal or for a certificate that the case is fit for appeal, notwithstanding that the time for giving such notice or making such appeal may have already expired: ...

7. The guiding principles in an application such as the present one were identified by the Supreme Court in [Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others](#) [2014] eKLR as follows:

This being the first case in which this Court is called upon to consider the principles for extension of time, we derive the following as the under-lying principles that a Court should consider in exercise of such discretion:

1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;
  2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court
  3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
  4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court;
  5. Whether there will be any prejudice suffered by the respondents if the extension is granted;
  6. Whether the application has been brought without undue delay; ...
8. Judgment was delivered in this matter on January 25, 2023. In view of Rule 75 of the [Court of Appeal Rules](#), 2010, notice of appeal was to be lodged within fourteen days of delivery of the judgment, that is, by the end of the day on February 8, 2023.
9. The present application was filed on February 28, 2023, 20 days after the time for filing Notice of Appeal had lapsed. The applicant claims that when he attended court on January 25, 2023 in the morning for delivery of judgment, judgment was not read until the court went on lunch break and that he only learnt that his case had been dismissed when a copy of the judgment was supplied to his advocate on February 20, 2023. The applicant is being disingenuous. The judgment was delivered on January 25, 2023 at 9:00am, as is the practice of the court for all judgments and rulings. The date of delivery was scheduled on December 6, 2022, in the presence of counsel for the applicant. I note that the applicant has not offered any credible explanation as to non-attendance by his advocates at the time of delivery of the judgment.
10. Whereas I understand the urge to justify the delay, the applicant is reminded that it is the duty of every litigant who seeks discretionary and equitable relief to approach the court with a full and frank disclosure of material facts. Brazen misrepresentations such as the one advanced by the applicant do not help his case at all. That said, in the circumstances of this case, a delay of 20 days is not inordinate and on the whole, the applicant should be given the opportunity to have his day in the appellate court.



I see no prejudice to the respondent beyond that which can be compensated by an award of costs. I will therefore grant extension of time to file a notice of appeal against the judgment.

11. In the result, I make the following orders:

- a. Time for the plaintiff to file Notice of Appeal in respect of the judgment delivered in this matter on January 25, 2023 is hereby extended.
- b. The plaintiff to file and serve Notice of Appeal in respect of the judgment delivered in this matter on January 25, 2023 within 14 (fourteen) days from the date of delivery of this ruling. In default, Notice of Motion dated February 28, 2023 shall stand dismissed with costs to the defendant.

**DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 25<sup>TH</sup> DAY OF APRIL 2023.**

**D. O. OHUNGO**

**JUDGE**

Delivered in open court in the presence of:

No appearance for the plaintiff

No appearance for the defendant

Court Assistant: E. Juma

