



**Jigish v Chiro & 2 others (Environment and Land Miscellaneous Application
2 of 2021) [2023] KEELC 22594 (KLR) (19 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 22594 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 2 OF 2021
SO OKONG'O, J
JUNE 19, 2023**

BETWEEN

JYOTI JIGISH APPLICANT

AND

DICKSON ODINGO CHIRO 1ST RESPONDENT

YASKA PETROLEUM LIMITED 2ND RESPONDENT

THE DISTRICT LAND REGISTRAR 3RD RESPONDENT

RULING

1. What is before me is the applicant's application dated 13th January 2021 brought under sections 63(e), 79G and 95 of the *Civil Procedure Act* and rule 51 (1) of the *Civil Procedure Rules*, 2010.
2. In the application, the applicant has sought leave to appeal out of time against the judgment of Hon. H.M.Nyaberi, SPM delivered on March 16, 2020 in Winam SPMCELC No. 31 of 2018 and the cost of the application. The application has been brought on the grounds set out on the face thereof and on the affidavit sworn by the applicant's advocate Bruce O. Odeny on January 13, 2021. The applicant has averred that in the judgment in respect of which leave to appeal has been sought, the lower court dismissed the applicant's suit with costs and allowed the 1st and 2nd respondents' counter-claim. The applicant has averred that she is aggrieved by the said judgment and intends to appeal against the same to this court. The applicant has averred that she has an arguable appeal with good chances of success.
3. In the supporting affidavit, the applicant's advocate has stated that the impugned judgment was delivered at a time when the first case of Covid – 19 had just been reported in Kenya by the President of the Republic of Kenya and the Chief Justice had issued directions on March 15, 2020 restricting court operations due to the pandemic. The applicant's advocate has averred that the time within which the applicant was to lodge the appeal lapsed when the court operations were still scaled down. The applicant's advocate has averred further that by the time the court resumed normal operations, he had



lost contact with the applicant who had relocated to Nairobi due to economic difficulties brought about by the Covid-19 pandemic. The applicant's advocate has contended that he could not proceed with the appeal without the applicant's instructions. The applicant's advocate has averred that he later got in touch with the applicant who expressed interest in pursuing the appeal by which time, the time to file the appeal had lapsed.

4. The application is opposed by the 1st and 2nd respondents through grounds of opposition dated 28th January 2021. The 1st and 2nd respondents (hereinafter referred to only as "the respondents") have contended that the applicant is guilty of laches and as such she is not deserving of the exercise of this court's discretion in her favour. The respondents have averred that the applicant has not explained the delay of 10 months before filing the application. The respondents have contended that the application is an afterthought.
5. The application was argued by way of written submissions. The applicant filed her submissions on 18th March 2021 while the respondents filed their submissions on 15th March 2021. I have considered the applicant's application together with the affidavit filed in support thereof. I have also considered the respondents' grounds of opposition. Finally, I have considered the submissions by the advocates for the parties.
6. The following is my view on the matter. Section 16A (1) of the *Environment and Land Court Act, 2011* provides that appeals from Subordinate Courts and Local Tribunals shall be filed within 30 days from the date of the decree or order appealed against.

Section 16A (2) of the said Act provides that:

“ An appeal may be admitted out of time if the appellant satisfies the court that he had a good and sufficient reason for not filing an appeal in time.”

7. The burden was upon the applicant to satisfy the court that she had a good and sufficient reason for not filing the appeal within the prescribed time. The applicant did not file any affidavit in support of the application. The application was supported by the affidavit of the applicant's advocate Mr. Bruce Odeny. The reasons given by the said advocate for the applicant's failure to file the appeal within the prescribed time were the scaling down of court operations and lack of instructions from the applicant.
8. I am not satisfied that the reasons given by the applicant for her failure to file the appeal within the prescribed time are good and sufficient reasons that would justify the extension of time sought. The judgment of the lower court was delivered on March 16, 2020 in the presence of the advocate for the applicant. The applicant had up to April 16, 2020 to file the appeal. It is common knowledge that the court operations were scaled down for some time due to the Covid-19 pandemic. The court was however not closed down. There is no evidence that the applicant made any attempt to file a memorandum of appeal and was unable to do so due to the scaling down of court operations. There is also no evidence before the court that the applicant's advocate made an attempt to contact the applicant and he was unable to do so due to the relocation of the applicant to Nairobi.
9. I am also in agreement with the respondents that the application before the court was brought after an unreasonable delay. The applicant has not explained why it took her 9 months after the expiry of the time within which she was to file the appeal to bring the present application for an extension of time. I am in agreement with the respondents that the applicant is guilty of laches and indolence. Such a party is not deserving the exercise of this court's discretion.



10. For the foregoing reasons, it is my finding that the threshold for extension of time has not been met by the applicant. The applicant's notice of motion dated January 13, 2021 is without merit. The same is dismissed with costs to the 1st and 2nd respondents.

DELIVERED AND DATED AT KISUMU ON THIS 19TH DAY OF JUNE 2023

S. OKONG'O

JUDGE

The ruling read through Microsoft Teams Video Conferencing platform in the presence of;

Ms. Akinyi for the Applicant

N/A for the Respondents

Ms. J. Omondi-Court Assistant

