



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
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**Auma v Oketch (Environment and Land Miscellaneous Case
9 of 2022) [2025] KEELC 5321 (KLR) (17 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 5321 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
ENVIRONMENT AND LAND MISCELLANEOUS CASE 9 OF 2022**

MN KULLOW, J

MARCH 17, 2025

BETWEEN

CONSOLATA AUMA APPLICANT

AND

MICHAEL OCHIENG OKETCH DEFENDANT

RULING

1. By a Notice of Motion dated 7/7/2022, the Plaintiff/Applicant sought for the following Orders:
 - i. Spent
 - ii. The court do grant leave for extension of time to lodge an Appeal against the Order/Ruling delivered on 26/4/2022 on the Application dated 15/10/2021
 - iii. Cost of the Application be provided for.
2. The Application was based on the grounds that the Applicant had intentions to appeal against a Ruling that was delivered without Notice of the date of the Ruling was never brought to the attention of the parties and further the implementation of the Order resulting from the said Ruling will greatly prejudice the Application.
3. The Application was further supported by the Affidavit of the Applicant in which he deponed that a Ruling in the matter that was scheduled for 12/4/2022 was delivered on 26/4/2022 without Notice to the parties and that the implementation of the Orders will greatly prejudice him.
4. The Application was opposed by the Respondent by way of a Replying Affidavit sworn on 2/8/2022 in which the Respondent deponed that he disputes the allegations in the Supporting Affidavit alleging that parties were not aware of the Ruling date in the Application dated 15/10/2022.



5. The Respondent stated that when the Ruling was scheduled on 12/4/2022, the said Replying Affidavit was not ready and parties were advised to check the following week on 25/4/2022 but still he said the ruling was not ready but a Ruling delivered on 26/4/2022 a date he was advised by a Court Assistant which was one of the days the trial court ordinarily heard Civil Matters.
6. The Respondent further contented that the Applicant is not entitled to an Appeal as he preferred to have the matter re-heard.
7. I have considered the Application before me and the Replying Affidavit in opposition and the submission and the solo issue for determination before me is whether the Application had Notice of the date of Ruling and if not would the same be prejudicial.
8. It is not contested by either of the parties that a Ruling in the subordinate court was scheduled for 12/4/2022 but the same was not delivered as the trial court had advised the parties that the Ruling was not ready.
9. Hereafter and from the pleadings, the Applicant stated that the Ruling was delivered on 26/4/2022. However, neither the Applicant nor the Respondent had annexed a copy of the Notice of Ruling as required.
10. I have also perused a copy of the signed ruling and I find that the same was also delivered without the presence of any of the parties.
11. The sum total of the above is that the ruling though delivered on 25/4/2022, none of the parties was formally notified and consequent to the above and in those circumstances. I allow the Notice of Motion dated 7/7/2022 on the following terms:-
 - i. That leave is hereby granted to extend time to lodge an Appeal against the Order/Ruling delivered on 26/4/2022
 - ii. A stay of execution is hereby granted pending the hearing and determination of the intended Appeal
 - iii. That the Applicant to file his Appeal within 45 days of this Ruling

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 17TH DAY OF MARCH, 2025.

MOHAMMED N. KULLOW

JUDGE

In the presence of:

No appearance For the Plaintiff

No appearance for the Defendant

Vincent M. Court Assistant

