



Kassamalikaramali (aka) Munirjaganit t/a Roshina Timbermart v Omar (Miscellaneous Application 18 of 2023) [2023] KEELC 21125 (KLR) (25 October 2023) (Ruling)

Neutral citation: [2023] KEELC 21125 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
MISCELLANEOUS APPLICATION 18 OF 2023
EK MAKORI, J
OCTOBER 25, 2023**

BETWEEN

**MUNIR KASSAMALIKARAMALI (AKA) MUNIRJAGANIT T/A ROSHINA
TIMBERMART APPELLANT**

AND

SALIM SHEIKH OMAR RESPONDENT

RULING

1. On 3rd April 2023 this court (Dena J.) issued an ex parte order as follows:

“For the reasons that the period for filing an appeal has lapsed by nine days as stated and the imminence of execution of the Judgment herein, I will certify the application urgent and grant leave to file an appeal out of time. However, I am not persuaded that orders of stay of execution should be issued without the benefit of hearing the other party. Let the application be served upon the Respondent forthwith but not later than 5th April 2023. The application should be fixed for inter parties hearing before the ELC Judge in Malindi.”
2. Those orders provoked the immediate filing of ELC Appeal No. E012 of 2023.
3. When the matter came up on 2nd May 2023 Mr. Kimani raised a Preliminary issue that the orders of extension of time were issued without the benefit of service and hearing the Respondent. I directed we reher the issue of extension of time afresh, hence this ruling.
4. Mr. Kimani urged that the motion dated 31st March 2023 ought to have been served on the Respondent before the enlargement of time (see the decision in *Craig v Kanseen* [943]ALL. 108
5. The judges' orders, according to Mr. Kimani, reserved nothing for inter partes hearing.



6. That the intended appeal will be doomed to fail as already eviction happened and the shop has already been sublet to another tenant.
7. That the entry of Mr. Mkan in this proceedings was without leave of the court.
8. Mr. Mkan contended that the appeal was late by merely nine days and therefore the orders issued ex parte by the Judge were merited.
9. I have reviewed the materials placed before me by the parties. The proceedings in the lower court show Mr. Mkan was admitted to come on record post-judgment so his presence in these proceedings cannot be said to be strange.
10. The nine-day period within which to file an appeal has been explained – the former counsel for the applicant was not conveying information to his client. Proceeding in the lower court show that he did not attend the hearing which proceeded ex parte.
11. The appeal wishes to address the issue of jurisdiction on the Landlord and Tenant relationship as to whether it falls within the armpit of the Magistrates Court or the Business Premises Tribunal (BPRT).
12. To balance the interests of the applicant (right of appeal) and that of the respondent (enjoyment of the fruits of judgment), I will grant leave to the applicant to appeal out of time - costs in the intended appeal ELC A No. E012/2023 is at this moment activated.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY IN OPEN COURT ON THIS 25TH DAY OF OCTOBER 2023

E.K. MAKORI

JUDGE

In the presence of:

Mr. Mkan for the applicant

Mr. Kimani for the respondent

Clerk: Happy

