



REPUBLIC OF KENYA



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**Chairman A.I.P.CA Church Isiolo v Mugambi (Environment & Land Miscellaneous
Case 13 of 2022) [2023] KEELC 20914 (KLR) (23 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20914 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO
ENVIRONMENT & LAND MISCELLANEOUS CASE 13 OF 2022
PM NJOROGE, J
OCTOBER 23, 2023**

BETWEEN

CHAIRMAN A.I.P.CA CHURCH ISIOLO PLAINTIFF

AND

GIKUNDA ELIAS MUGAMBI DEFENDANT

RULING

1. This application is dated 29/11/2023 and seeks orders:
 1. That this application be certified urgent and heard on priority basis.
 2. That this Honourable Court be pleased to grant the applicant leave to appeal out of time against the judgment of Hon. E Ngigi –(PM) in Isiolo ELC Case No. 83 of 2014; Gikundi Elias Mugambi Vs Chairman A.I.P.C.A delivered on 24th May, 2022.
 3. That this Honourable Court be pleased to stay execution of the judgment of the trial court pending the hearing and determination of the intended appeal.
 4. That the draft memorandum of appeal filed herewith be deemed as properly filed and on record.

2. The application is supported by the affidavit of Charles Gitonga, Chairman of AIPCA Church, the applicant and has the following grounds;
 - a. On May 24, 2022 the Hon. E Ngigi (PM) delivered a judgment in Isiolo ELC Case No. 83 of 2014; Gikunda Elias Mugambi Vs Chairman A.I.P.C.A .



- b. On 30th May, 2022 the firm on record for the applicant herein before the trial court formally made a request to Isiolo Law Court for certified copies of the judgment in Isiolo ELC No. 83 of 2014.
 - c. On May 31, 2014 the lower court at Isiolo Law Courts acknowledged receipt of the request letter upon payment of the requisite court fees.
 - d. It is not until July 13, 2022 That we were supplied with a copy of the judgment which was still uncertified by the Honourable trial court to enable us prepare for appeal.
 - e. We have on various occasions followed up on the certified copy of the proceedings and judgment of the trial court with little success.
 - f. As a result of the delay in accessing certified copies of the trial court proceedings and judgment of the trial court with little success.
 - g. As a result of the delay in accessing certified copies of the trial court proceedings and judgment, the applicant herein is outside the statutorily prescribed timelines for filing an appeal to this Honourable Court.
 - h. The delay in filing an appeal within time was inadvertent and excusable in the circumstances.
 - i. The applicant now seeks leave of court to file an appeal out of time against the trial court's Judgment.
 - j. Pursuant to section 79G of the Civil Procedure Act, this Honourable Court has discretion to grant leave for the applicant to file an appeal out of time.
 - k. The applicant contends That he has an arguable appeal.
 - l. It is in the interest of justice That the orders sought herein are granted.
3. The application was canvassed by way of written submissions.
 4. In his submissions the applicant says That he could not file his appeal in time because he was unable to get a typed judgment in good time. He says That judgment was delivered on 24/5/2022 and his advocates applied for the requisite documents on 31/5/2023. He continues to say That he received the required documents on 13th July, 2022 but adds That the copy of Judgment he received was not certified. He deems That this sequence of events is enough reason for this court to exercise its discretion to allow him to file an appeal out of time.
 5. He proffered the case of *First American Bank of Kenya Ltd Versus Gulab P Shab & 2 Others* (Milimani) HCCC No. 2255 of 2000 [2002] I EA 65 for his assertion That he had explained the delay in filing his appeal. He also proffered the case of *Vishra Stone Supplies Limited Versus RSR Stone [2000] limited*, [2020] eKLR for his assertion That this court should exercise its inherent power and not be unnecessarily encumbered by procedural technicalities. To buttress its assertion That the court had inherent powers to extend the time for appeal, the applicant further proffered the cases of *Equity Bank Limited Versus West Link Mbo Limited* [2013] eKLR and *Board of Governors, Moi High School, Kabarak & Another Versus Malcom Bell* [2013] eKLR.
 6. The respondent has opposed the application. He says That the applicant has not offered any plausible explanation as to why he did not file his appeal in time. He says That after applying for the required



- documents on May 31, 2022 he did not diligently follow up the matter and That even after receiving an uncertified judgment on 13th July, 2022 he only filed this application on 30th November, 2022 over 6 months after the impugned judgment was delivered.
7. Regarding stay of execution as prayed for in prayer 2 of the application, the respondent submits That the applicant did not offer deposit for security as mandatorily required by order 42 rule 6(1) of the *Civil Procedure Rules*, 2010.
 8. The respondent concludes That the applicant has not demonstrated a sufficient cause for filing his appeal in time.
 9. The respondent has proffered the case of *Mombasa County Government Versus Kenya Ferry Services & Another* [2019] eKLR for his assertion That though it is clear That the discretion by the court to extend time is unfettered nevertheless the applicant must justify the exercise of That discretion through a cogent explanation.
 10. I have considered the pleadings and the submissions proffered by the parties to buttress their veritably incongruent and diametric positions.
 11. I find That there were material lapses after judgment was delivered to persuade me That the appellant was materially inconvenienced in the facilitation of access to records necessary for the filing of its intended appeal. In the circumstances, I issue the following order;-
 - a. Prayers 2 and 4 in the application are allowed.
 - b. Regarding prayer 3 for stay of execution of the apposite judgment, the applicant is directed to deposit with court as security the sum of Kshs. 300,000/= within 21 days of today failing which, the grant of stay granted herein shall automatically lapse.
 - c. Costs shall be in the cause.

DELIVERED IN OPEN COURT AT ISIOLO THIS 23RD DAY OF OCTOBER, 2023.

HON. JUSTICE P.M NJOROGE

JUDGE

