



REPUBLIC OF KENYA



**KENYA LAW**  
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**Nkuraru v M'minyori (Environment and Land Miscellaneous Application  
12 of 2022) [2023] KEELC 20942 (KLR) (23 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20942 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 12 OF 2022  
PM NJOROGE, J  
OCTOBER 23, 2023**

**BETWEEN**

**MUTHEE NKURARU ..... APPLICANT**

**AND**

**JOSEPH M'MINYORI ..... RESPONDENT**

**RULING**

1. This application is dated 23<sup>rd</sup> November, 2022 and seeks the following orders;
  - a. That this Honourable Court be pleased to grant the applicant leave to file appeal out of time against the decision in Isiolo CM ELC No 62/2018.
  - b. That the costs of the application do abide by the outcome of the appeal.
2. The application is supported by the affidavit of Muthee M'Nkuraru, the applicant and has the following grounds;
  - a. The applicant is dissatisfied with the decision in Isiolo CM ELC No 62/2018 and intends to appeal to this court.
  - b. That the proceedings took time to be typed hence the time for filing this appeal lapsed.
3. The application was canvassed by way of written submissions.
4. The judgment for which an appeal is intended was delivered on 16/11/2021. In his submissions the applicant says that his advocates, the firm of Ayub Anampiu & Company, applied for judgment and proceedings on 23/11/2021 with a view to filing an appeal. The firm of advocates says that it only received a copy of the judgment on 11/3/2022 by which time the time to appeal had already lapsed.

The firm of advocates continues to say that although it drew a certificate of delay and sent it to the Chief Magistrate Court, it had not been signed at the time this application was filed.



It is, therefore, submitted that this application was filed without delay and is merited.

5. The respondent opposed this application through a replying affidavit sworn on 3<sup>rd</sup> January, 2023 and prayed for dismissal of the application. On 18<sup>th</sup> September, 2023, this court noted that although the applicant had filed submissions almost two months before, he had not given any explanations to why he had not served them upon the respondent. This may suggest that the applicant may have not been in a hurry to have this application determined.
6. The respondent referred to the applicant's admission that he obtained judgment and proceedings on 11/3/2022. He however pointed out that the applicant filed this application on 23<sup>rd</sup> November, 2022. He submits that the applicant has not explained the reason why it took him 10 months before he filed this application for extension of time. He says that this is an old case filed way back in 2018 and opines that the applicant only wants to contrive a mechanism to prolong the apposite litigation.
7. Having considered the facts and circumstances of this case, I find that the applicant is guilty of inordinate delay. He has not explained, at all, the reason for the inordinate delay. The delay is, therefore, inexcusable.
8. In the circumstances, I issue the following orders;
  - a. The application is dismissed.
  - b. Costs are awarded to the respondent.

**DELIVERED IN OPEN COURT AT ISIOLO THIS 23<sup>RD</sup> DAY OF OCTOBER, 2023 IN THE PRESENCE OF:**

Caleb Mwiti holding brief for Miss Githinji for the Respondent.

**HON. JUSTICE P.M NJOROGE**

**JUDGE**

