



Ngaruthi v Bonsa & 2 others (Environment & Land Miscellaneous Case 1 of 2021) [2023] KEELC 20736 (KLR) (16 October 2023) (Ruling)

Neutral citation: [2023] KEELC 20736 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO
ENVIRONMENT & LAND MISCELLANEOUS CASE 1 OF 2021
PM NJOROGE, J
OCTOBER 16, 2023**

BETWEEN

PATRICK MUNGANIA NGARUTHI PLAINTIFF

AND

ADAN HUQA BONSA 1ST RESPONDENT

JULIUS MWENDA 2ND RESPONDENT

ABDULAZIZI RASHID 3RD RESPONDENT

RULING

1. This application is dated August 16, 2023 and seeks orders;
 1. That this application be certified urgent and the same be heard *ex-parte* in the 1st instance.
 2. That leave be granted to the firm of Kevin Nyenyire & Co Advocates to come on record for the Applicant/Intended Appellant.
 3. That there be a stay of the final Judgment, Decree dated May 25, 2023 issued by Hon E Tsimonjero, SRM pending the hearing and determination of this application.
 4. That leave be granted to the Applicant to appeal out of time against the decision of Hon E Tsimonjero, SRM in Isiolo Chief Magistrate Court ELC No 54 of 2018.
 5. That the costs of this application be provided for.
2. It is supported by the affidavit of Patrick Mungania Ngaruthi, the applicant, and has the following grounds;
 - A. That the applicant is aggrieved by the judgment delivered on May 25, 2023.
 - B. That the court registry at Isiolo delayed in preparing the appeal documents.



- C. That The applicant has an arguable appeal with probability of success.
- D. That the respondents are likely to execute against the applicant any time pending the hearing and determination of this application and/or appeal
- E. That the Applicant is willing to deposit security of costs pending the hearing of this application and appeal.
- F. That no prejudice will be suffered by the Respondents.
3. The application was canvassed on October 2, 2023. Mr Mwiti who was holding brief for Mr Kevin Nyenyire, the applicants advocate told the court that extension of time to appeal was necessary as the applicant had an arguable case. He also told the court that the application could not be filed earlier as the registry and the Deputy Registrar had failed to supply the lower court proceedings in time.
4. On the face of the application, I note that it is indicated that the applicant is willing to deposit security for costs.
5. Advocate Lekoona who represented the respondents opposed the application. He said that the application was filed on September 5, 2023 whereas the impugned judgment was delivered on January 24, 2023 over 7 months after the judgment was delivered. He said that this was inordinate delay. Mr Lekoona also told the court that the applicant had not produced an lota of evidence concerning the arguability of the intended appeal. He also told the court that the applicant had not proffered a certificate of delay to support the reason for the applicant to seek an extension of time over 7 months after the impugned judgment was delivered.
6. I agree with Mr Lekoona that this application was filed inordinately late, 7 months after the impugned judgment was delivered. I also note that no certificate of delay was proffered to explain the applicant's apparent indolence.
7. In the circumstance, I issue the following orders;
- a. This application is dismissed.
 - b. Costs are awarded to the respondents.

DELIVERED IN OPEN COURT AT ISIOLO THIS 16TH DAY OF OCTOBER, 2023 IN THE PRESENCE OF:

Court assistant: Balozi/Rahma

Kevin Nyenyire for the Applicant.

Lekoona for the Respondent.

HON. JUSTICE P.M NJOROGE

JUDGE

