



REPUBLIC OF KENYA



**Babu v Onuko & another (Environment and Land Appeal E006 of 2022)
[2023] KEELC 21799 (KLR) (22 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21799 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT AND LAND APPEAL E006 OF 2022**

JM KAMAU, J

NOVEMBER 22, 2023

BETWEEN

WILFRED KEGONYE BABU APPELLANT

AND

MARY KERUBO ONUKO 1ST RESPONDENT

GEORGE MORARA ONUKO 2ND RESPONDENT

RULING

1. Before me are 2 Notice of Motion Applications both dated 10/8/2023. The first one seeks for orders: -
 - (1) That this Application be certified as urgent during this vacation period and service be dispensed with in the first instance.
 - (2) THat the Honourable Court be pleased to grant leave to enlarge time for the Respondents/ Applicants to file an Appeal and/or be allowed to file an Appeal out of time against the whole Decision of the Judgment of the High Court of Kenya at Nyamira (Hon. Mugo Kamau, J.) in ELC Appeal No. E006 of 2022 -Nyamira dated 11th day of May, 2023)
 - (3) That the Honourable Court be Pleased to make such further or other orders as it may deem just and expedient in the circumstances of this case.
 - (4) That the costs of this Application be provided for.
2. The other case is for orders: -
 - (1) That this Application be certified as urgent during this vacation and service be dispensed with in the first instance.



- (2) That pending the hearing and determination of this Application the Honourable Court be pleased to stay any execution of the judgment delivered on the 11th day of May, 2023 with all the consequential orders.
 - (3) That pending the hearing and determination of this Application the Honourable Court be pleased to stay taxation proceedings before the Deputy Registrar, Nyamira arising out of the judgment delivered on the 11th day of May, 2023 with all the consequential orders.
 - (4) That the Court be pleased to give directions as to its order directing the matter to be heard afresh before another Magistrate whereas there are only two Magistrates at Keroka Law Courts. Hon. Kimutai who had already recused himself from the hearing of the matter and Hon. Ombija who heard the matter.
 - (5) That the Honourable Court be pleased to make such further or other orders as it may deem just and expedient in the circumstances of this case.
 - (6) That the costs of this Application be provided for.
3. I will deal first with the Application for extension of time to file an Appeal in the Court of Appeal against the Judgment of this Court. The Respondents in this Appeal have grounded their Appeal on the facts that the Judgment appealed against was delivered without Notice to her and her Co-Respondent. They only came to know about the delivery of the Judgment when they were served with a Notice of Taxation on 18/7/2023. That the Decision of this Court delivered on 11/5/2023 would lead to draconian consequences if not overturned hence the need for Appeal. The Appellant on the other hand filed grounds of opposition on 6/9/2023 which grounds are to the effect that this Court lacks jurisdiction to enlarge time within which to lodge an Appeal to the Court of Appeal and therefore the Application is utterly misconceived and otherwise an abuse of the process of the Court. I allowed the parties to argue the Application before me which submissions I have taken into count.
 4. I agree with the Appellant that this Court has no jurisdiction to enlarge the time for filing an Appeal to the Court of Appeal. Such jurisdiction is vested by statute and in this case the same is conferred upon the Court to which the Appeal is to be lodged. You cannot knock on the door of one house to ask to have the door of the neighbouring house opened for you. What if you are unwanted in the other house? How will the answer to your first knock the assist you? You will still be locked out. In a deserving case the power to enlarge time to file a Notice of Appeal is donated to this Court by section 7 of the [Appellate Jurisdiction Act](#) (Cap 9 Laws of Kenya) which provides as follows; -

The High Court may extend the time for giving notice of intention to appeal from a judgment of the High Court or for making an application for leave to appeal or for a certificate that the case is fit for appeal, notwithstanding that the time for giving such notice or making such appeal may have already expired:
 5. But as to the power to enlarge time within which to file an Appeal from this Court to the Court of Appeal, the same is vested by Rule 4 of the [Court of Appeal Rules](#), 2010 under the [Appellate Jurisdiction Act](#) as follows; -

The Court may, on such terms as it thinks just, by order extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.



where under Rule 2 of the Act on Interpretation it is quite clearly explained that in these Rules, unless the context otherwise requires—"Court" means the Court of Appeal and includes a division thereof and a single judge exercising any power vested in him sitting alone.

6. I am unable to find any provision of law that gives me jurisdiction to extend time to file an Appeal out of time to the Court of appeal and I don't intend to confer myself with such power or jurisdiction as is not vested in me. The Application is therefore disallowed with cost.
7. As to the 2nd Application, I take Judicial Notice that the situation has now changed in Keroka Principal Magistrate's Court since Honourable Kimutai has been replaced with a new Magistrate who has not handled the matter before.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 22ND DAY OF NOVEMBER, 2023.

MUGO KAMAU

JUDGE

In the Presence of: -

Court Assistant: - Brenda

No appearance for the Appellant

Mr. Aencha for the Respondents

