



**Abduba v Hussein (Environment & Land Miscellaneous Case
14 of 2022) [2023] KEELC 21650 (KLR) (20 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21650 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO
ENVIRONMENT & LAND MISCELLANEOUS CASE 14 OF 2022
PM NJOROGE, J
NOVEMBER 20, 2023**

BETWEEN

GUYO ABDUBA APPLICANT

AND

HAWO HUSSEIN RESPONDENT

RULING

1. This application is dated November 30, 2022 and seeks orders;
 1. That this application be certified as urgent and the same be heard as a matter of priority.
 2. That this Honourable court be pleased to increase the time to appeal the decision in Isiolo CM ELC No. 12 of 2009 delivered on 13/8/2019.
 3. That this Honourable Court be pleased to issue any other orders to meet the ends of justice.
 4. That the costs for and incidental to this application do abide to the expected appeal.
2. The application is supported by the affidavit of Guyo Abduba, the applicant and has the following grounds:
 - i. That the appellant was the substituted 2nd defendant in Isiolo PMCC No. 12 of 2009.
 - ii. That the respondent has sued the applicant and 3 others over her plot No. ISL/117/98/217 situated at Isiolo Town.
 - iii. That the applicant in his defence was able to demonstrate that he had no interests over the respondent's plot but had his plot No. ISL/117/98/321.
 - iv. That the matter proceeded to hearing and the court found in favour of the respondent despite the fact the applicant had demonstrated that he had no interests over the respondent's plot.



- v. That the implication of the decision delivered on 13/8/2019 meant that the respondent could evict the applicant from Plot No. ISL/117/98/321.
 - vi. That the applicant instructed the law firm of Kiogora Mugambi & Co. Advocates to lodge his appeal but has just discovered that none was ever lodged on his behalf.
 - vii. That since the applicant was dissatisfied with the decision of 13/8/2019 and now that the time for appeal has lapsed it is in the interest of substantive justice that he be allowed more time to appeal.
 - viii. That the application is brought in the interest of substantive justice.
3. The application was canvassed by way of written submissions.
 4. In the background to this application the applicant attacks the lower court's judgment. This is definitely the wrong approach in canvassing an application for extension of time to appeal the decision of a lower court.
 5. The applicant says that after judgment was delivered, he instructed the law firm of Kiogora Mugambi & Co. Advocates to file an appeal. He says that instead of that firm filing a separate appeal, he sneaked his name into Appeal No.106 of 2019 as the 2nd appellant during submissions. He terms this as a miscarriage of justice. He says that the provisions of the Rule 4 of the Court of Appeal rules as restated by the Supreme Court of Kenya in the case of *Nicholas Kiptoo Arap Korir Salat Versus Independent Electoral Boundaries Commission & 7 Others* support this application. He does not elaborate on which section of the rules or which issues contained in the Supreme Court of Kenya's decision are in favour of his application.
 6. The respondent vehemently opposes this application. He says that the applicant is being economical with the truth concerning the firm of Kiogora Mugambi & Co. Advocates. He says that the file in the lower court shows that the firm represented him in the lower court. He says that the fact that the firm of Kiogora Mugambi & Co. Advocates filed Appeal No. ELC No. 106 of 2019 on behalf of the other defendant and not the applicant is prima facie evidence that the firm had not been instructed by him, otherwise it could have included his name in the appeal.
 7. The respondent submits that the role of the court is to pronounce itself on the issue of enlargement of time for lodging an appeal and not to re-litigate issues which have already been canvassed before the trial court. I agree.
 8. The respondent further submits that the applicant has not explained even to the slightest extent why the court should enlarge time for lodging of the applicant's intended appeal. Therefore, according to him the applicant has not laid any basis to the satisfaction of the court that the orders he seeks in this application should be granted. The respondent proffers the case of *Kenya Revenue Authority Versus 2 others Mount Kenya Bottlers* (Application 12 (E02) of 2021 [2022] KESC 3 KLR) to buttress his argument regarding enlargement of time.
 9. The respondent brings it to the court's attention that it is 14 years since the trial court matter (i.e Isiolo CMCC No. 12 of 2009) was filed and that this application was filed over 3 years after judgment in Isiolo ELC No. 12 of 2009 was delivered on 13/8/2019.
 10. I have carefully considered the pleadings, the authorities and the submissions proffered by the parties to buttress their assertions. When dealing with issues concerning enlargement of time, a court of law should not be seen to attempt to re-litigate issues canvassed in the trial court. That is the province of an appellate court once an appeal is admitted to hearing. At this stage, a court of law is only concerned



with deciding if or not an applicant has offered cogent reasons to the satisfaction of the court regarding why time for an intended appeal should be enlarged.

11. In this matter, the applicant has not even attempted to the slightest degree to show why it has taken him over 3 years before filing this application. Even assuming that his advocate did not file a separate appeal, as he alleges, did it take him 3 years for him to realize that his instructions to his advocate had not been actualized? Surely a diligent litigant cannot be that careless. Filing an application for enlargement of time over 3 years after the impugned trial court Judgment amounts to inordinate delay. The cause of that delay has not been explained. There has not even been an attempt to explain that cause. Even when such cause for delay is explained, it should be to the satisfaction of the court. In a nut shell no satisfactory explanation has been offered to this court for it to exercise its judicial discretion to issue the equitable remedy for enlargement of time in favour of the applicant.
12. Consequently, I issue the following orders;
 - a. This application is dismissed.
 - b. Costs shall follow the event and are awarded to the respondent.

DELIVERED IN OPEN COURT AT ISIOLO THIS 20TH DAY OF NOVEMBER, 2023 IN THE PRESENCE OF:

Court assistant: Balozi/Rahma

Miss Nyasani holding brief for Gichunge Muthuri.

Caleb Mwiti holding brief for Mbaabu M'Inoti for the Respondent.

HON. JUSTICE P.M NJOROGE

JUDGE

