



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT ISIOLO

MISC. ELC CASE NO. E001 OF 2022

HASSAN DABASO DUBA.....PLAINTIFF

VERSUS

THE CATHOLIC DIOCESE OF MARSABIT.....DEFENDANT

RULING

1. This application is dated 24th January, 2022. It seeks the following Orders:

1. **THAT** this application be certified as urgent and be heard forthwith exparte in the first instance.
2. **THAT** the Honourable court be pleased to grant the plaintiff/Applicant leave to Appeal out of time against the Judgement of Honourable Mbayaki Wafula Senior Resident Magistrate, Marsabit delivered on 14th July, 2021.
3. **THAT** the memorandum of Appeal annexed herewith be deemed as duly filed upon payment of the requisite fees.
4. **THAT** the costs of this application be provided for.

2. The application is supported by the affidavit of George Korongo, the Plaintiff's advocate sworn on 24/1/2022 and has the following grounds;

1. **That** the plaintiff/applicant advocate learnt recently upon perusing the court file that the judgement in this matter was delivered on 14/7/2021.
2. **That** the plaintiff's advocate attended court on the said 14/7/2021 for judgment but was told that the said judgment was not ready and will be delivered on notice.
3. **That** the Honourable court failed to notify the plaintiff's advocate when the judgment was to be delivered and/or when it was delivered.
4. **That** on the 3rd September 2021 plaintiff's advocate made a follow up through phone calls with the court clerk only to be told that judgment had already been delivered on the 14/9/2021(sic) which information he also confirmed by going to the registry to collect the same.
5. **That** the Applicant dissatisfied with the Judgement and intends to appeal against part of the decision and order of the Honourable Court.
6. **That** that the statutory period of filing the appeal expired as the Applicant was waiting to be notified of judgement date and trying to obtain the said judgment and there is need for the Honourable court to enlarge time to allow the plaintiff/Applicant to file an appeal out of time.
7. **That** plaintiff/applicant advocate tried to file the application for extension of time in the Senior Resident Magistrate court in Marsabit but the clerk at the registry refused to file the same for reasons that the magistrate handling the case Honourable Mbayaki Wafula (SRM) went for transfer and that that they have not been given any directions on Applications under certificate or urgency.
8. **That** plaintiff/applicant advocate further tried to file this application in the Environment and Land Court of Kenya At Meru but

after frequent follow up and phones calls he was later advised that Marsabit matters were to be heard in Isiolo.

9. **That** the plaintiff/Applicant's appeal which has very high chances of succeeding will be rendered nugatory unless the honourable court grants the Applicant's orders for filing an appeal out of time.

10. **That** the plaintiff/Applicant stands to suffer substantial and irreparable harm if orders for enlargement of time are not issued urgently.

11. **That** failure to file the memorandum of appeal within the prescribed time was not intentional but an inadvertent error the same having been caused by the no-communication of trial court on judgement.

12. That the plaintiff/Applicant has an arguable and meritorious Appeal with a good likelihood of success.

13. **That** the plaintiff/Applicant is bound to suffer irreparable prejudice, loss and damage unless thus Honourable Court grants the Orders sought herein.

14. **That** the defendants/Respondents shall suffer no prejudice if the application is allowed.

15. It is in the interest of justice that the prayers sought herein are granted.

3. During the date slated for interpartes hearing, Advocate Ashava asked the court to allow the application as it was not opposed. Although there is evidence that the defendant had been properly served, it was not represented in court.

4. In the circumstances, I issue the following orders:

a) Prayers 2 and 3 in the application are allowed.

b) Costs shall be in the cause.

c) Plaintiff to serve the orders issued by the court today upon the defendant within 14 days of today.

5. Directions on 16/5/2022.

WRITTEN AND DELIVERED IN OPEN COURT AT ISIOLO THIS 14TH DAY OF MARCH, 2022 IN THE PRESENCE OF:

Court Assistant: Balozi

Ashava h/b Korongo for the plaintiff.

HON. JUSTICE P. M. NJOROGE

JUDGE