



REPUBLIC OF KENYA



KENYA LAW
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**Gonjobe v Esekon (Environment & Land Case E002 of 2022)
[2022] KEELC 14939 (KLR) (21 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 14939 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO
ENVIRONMENT & LAND CASE E002 OF 2022
PM NJOROGE, J
NOVEMBER 21, 2022**

BETWEEN

SAID ABDI GONJOBE PLAINTIFF

AND

MARY JOMOO ESEKON DEFENDANT

RULING

1. This application says that it has been brought to court under section 1A,1B,3A and 79 of the [Civil Procedures Act](#) and orders 9 and 51 of the [Civil Procedure Rules](#).
2. The application seeks the following orders;
 1. That this honourable court be pleased to allow the applicant file an appeal against the ruling dated November 23, 2021 by the Honourable E Ngigi principal magistrate Isiolo law court in ELC No 6 of 2019 out of time.
 2. That this honourable court be pleased to order stay of execution of those orders issued by the principal magistrate in ELC case No 6 of 2019 herein pending the hearing and determination of this application
 3. That the cost of this application be provided for.
3. The application is supported by the affidavit of Said Abdi Gonjobe, the applicant, sworn in February 17, 2022 and has the following grounds;
 - a. That the Honourable E Ngigi principal magistrate ordered me to pay a throw away cost of Ksh 30,000/= to the defendant despite the fact that she has never attended hearing of this case even a single day since it was filed in court.



- b. That my advocate filed a notice of appeal and a memorandum of appeal in court on December 17, 2021.
 - c. That when he filed the same he was informed that there is no network to generate a receipt for payment of court fees.
 - d. That he was advised by the court clerk that he leave the copies with him who will once the network resume generate a receipt for payment of the court fees and make a call to him.
 - e. That on December 20, 2021, my advocate made a call to the said court clerk who informed him that the network had not yet resumed.
 - f. That he proceeded on christmas leave and resumed office on January 5, 2022.
 - g. That he went back to court and was informed that the court clerk had not resumed from his holiday and the file could not be traced.
 - h. That when the court clerk resumed from his leave, he retrieved the court file from the lower court bundles on January 11, 2022 and the memorandum of appearance received with the lower court file.
 - i. That my advocate had not refused to file this appeal in time but the blame lies squarely with the court.
 - j. That annexed herewith find a copy of a notice of appeal and a memorandum of appeal which was received with the lower court seal.
 - k. That the inaction by the court cannot be blamed upon the applicant.
 - l. That the applicant has a good appeal.
4. The application was canvassed by way of written submissions.
 5. I do not wish to delve into substantive issues concerning the apposite appeal. I will confine myself to the application dated February 12, 2012.
 6. Among other things, I note that the applicant's advocate in his submissions states that on May 18, 2021, the plaintiff was in court but the matter before court escaped his attention and as a result his case was dismissed for non-attendance. This admission amounts to indolence of the highest order. This court will not countenance such conduct.
 7. I have not been given a satisfactory explanation as to why the applicant failed to appeal the ruling dated November 23, 2022 within the stipulated time. Merely blaming an unnamed court clerk will not suffice.
 8. I agree with the respondent that this application was filed 3 months after delivery of the impugned ruling. This to me constitutes an inordinate delay.
 9. As the respondent has pointed out, this court *vide* a ruling delivered on February 2, 2022, at the *exparte* stage, granted the applicant stay of execution on condition that he deposited with court as security a sum of Kshs 50,000/= within 30 days of the ruling. This the applicant never did. Even in his submissions the applicant has not intimated that he is willing to deposit any sum of money as security as is decreed by the applicable law which makes such deposit mandatory.
 10. In the circumstances, I do dismiss prayers 1 and 2 in the application.



11. Costs shall follow the event and are, therefore, awarded to the respondent.
12. The upshot of what this court has stated above, is that this application is dismissed with costs awarded to the respondent.

DELIVERED IN OPEN COURT AT ISIOLO THIS 21ST DAY OF NOVEMBER, 2022 IN THE PRESENCE OF;

Court Assistant: Balози

Kitheka present for the Respondent.

Kiogora Mugambi absent for the Appellant.

HON. JUSTICE P.M NJOROGE

JUDGE

