



REPUBLIC OF KENYA



**Diba v Sharaiye (Environment & Land Miscellaneous Case 11 of 2022)
[2022] KEELC 15400 (KLR) (19 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15400 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO
ENVIRONMENT & LAND MISCELLANEOUS CASE 11 OF 2022
PM NJOROGE, J
DECEMBER 19, 2022**

BETWEEN

ELEMA GODANA DIBA PLAINTIFF

AND

ADAN ABDI SHARAIYE DEFENDANT

RULING

1. This application is dated October 29, 2022. It seeks the following orders;
 1. That this honorable court be pleased to grant leave to the applicant to file her appeal out of time, against the ruling of hon E Ngige dated the September 6, 2022 in *Isiolo CMCC ELC CASE NO E015 OF 2021* in which ruling the court struck out the suit with costs to the respondent.
 2. That cost of this application be in the cause.
2. This application is supported by the affidavit of Elema Godana Diba sworn on October 24, 2022 and has the following grounds;
 1. That the applicant herein filed a suit in the lower court against the respondent, in *Isiolo CMCC ELC CASE NO E015 OF 2021* seeking orders of permanent injunction, eviction, and general damages for breach of contract, trespass, loss of user among other prayers.
 2. That, the respondent through his counsel filed a preliminary objection on point of law, seeking to have the suit same struck out on grounds that, the suit was time barred, that the suit raised no reasonable cause of action for lack of proper description of the suit land, and that the court lacked jurisdiction to adjudicate over claims in respect of land whose regime is not recognized under the *Land Act* 2012.



3. That the objection was heard by way of written submissions and the ruling set for the September 6, 2022 but the same was not listed in cause list for that day and the court was on transfer.
 4. That the ruling was delivered on September 6, 2022 in absence of the parties and their counsels yet the same was not in the cause list.
 5. That the applicant came to know about the ruling on the October 21, 2022, that is 15 days after the period for filing appeal had lapsed and applied for the same and paid the requisite fees.
 6. That the delay in filing the appeal on time was not deliberate and or inordinate but was occasioned by confusion of the same not being put in the cause list and also the fact that the magistrate handling the matter was on transfer.
 7. That the intended appeal raises triable issues and has good chances of success.
 8. That land is an emotive matter and all the applicant wants is to be allowed a chance to ventilate her grievances on appeal.
 9. That the application is brought timeously and in good faith and will not prejudice the respondent in any way.
 10. That in the premises we urge the court to grant the order sought.
3. On December 19, 2022, advocate Nelima who represented the applicant told the court that one and a half months after the application was served upon the respondent, the respondent had not responded to the application in any way. She asked the court to allow the application.
 4. Advocate Wangechi Gikaara who held brief for the respondent's advocate asked the court to grant the respondent more time to respond to the application.
 5. Having carefully considered this matter, I find that this application should be allowed.
- In the circumstances, the following orders are issued;
- a. This application which is dated October 29, 2022 is hereby allowed.
 - b. Costs shall be in the cause.

DELIVERED IN OPEN COURT AT ISIOLO THIS 19TH DAY OF DECEMBER, 2022

In the presence of;

Court assistant: Rahma Jaldesa

Miss Nelima for the applicant

Wangechi Gikaara for the respondent.

HON. JUSTICE P.M NJOROGE

JUDGE

