



**Agenga v Alango (Environment and Land Appeal E008 of 2023)
[2024] KEELC 14202 (KLR) (5 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 14202 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT AND LAND APPEAL E008 OF 2023
GMA ONGONDO, J
NOVEMBER 5, 2024**

BETWEEN

FRANCISCA AKINYI AGENGA APPELLANT

AND

PHOEBY WARIA ALANGO RESPONDENT

RULING

1. The instant ruling in respect of a Notice of motion application dated 18th October 2024 is delivered in lieu of the expected judgment to meet the ends of justice herein pursuant to Articles 48, 25 (c) and 50 (1) of the *Constitution of Kenya 2010* and sections 3 and 3A of the *Civil Procedure Act* Chapter 21 Laws of Kenya.
2. In the application originated after this appeal was fixed for judgement, Ashioya and Company Advocates learned counsel for the respondent/cross appellant, Phoebe Waria Alango, is seeking that leave be granted to the respondent/cross appellant to file her submissions outside the timeline allocated by the court and costs of the application be provided for.
3. The gist of the application is that the respondent's counsel did not file submissions within the timelines set by the court as he was taking his ailing mother to various hospitals thus, was out of office for two months. That the submissions have already been filed and served. That therefore, this application be allowed and the respondent be accorded an opportunity to be heard in the appeal.
4. Mr. J. O Bunde learned counsel for the respondent has no opposition to the application. He has informed the court that the submissions sought to be filed have been filed and served in this matter.
5. So, is the application merited?
6. Indeed, the respondent/ cross appellant's counsel has filed submissions dated 25th October 2024 in this appeal.



7. The right to be heard is fundamental and permeates the entire justice system; see *Philip Chemwolo and another v Augustine Kubende* (1986) eKLR and *James Kanyiita Nderitu and another v Marios Philotas Gbikas and another* (2016) eKLR.
8. In the foregone, I find the application unchallenged and meritorious. The same is hereby allowed in terms of leave sought therein as stated in paragraph 2 hereinabove and the respondents submissions duly filed and served herein.
9. Costs of the application to abide the outcome of this appeal.
10. Judgment is hereby set for 10th December 2024.
11. It is so ordered.

DATED AND DELIVERED AT HOMA BAY THIS 5TH DAY OF NOVEMBER 2024.

G.M. A ONG'ONDO

JUDGE

Present;

1. J. O Bunde learned counsel for the appellant/respondent
2. Mutiva, court assistant

