



REPUBLIC OF KENYA



**Esiba v Egeda (Environment & Land Case 35 of 2015)
[2023] KEELC 455 (KLR) (2 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 455 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIRONMENT & LAND CASE 35 OF 2015**

**BN OLAO, J
FEBRUARY 2, 2023**

BETWEEN

JOHN ANGII ESIBA APPLICANT

AND

HENERIA ADIPO EGEDA RESPONDENT

RULING

1. The judgment herein was delivered by Omollo J on July 28, 2022 in open Court in the presence of the parties and their counsel.
2. The defendant was aggrieved by the said judgment and lodged in this registry on August 8, 2022 a Notice of Appeal dated August 22, 2022.
3. By a chamber summons application dated November 2, 2022 and premised upon the provisions of Sections 79G of the *Civil Procedure Act*, Order 50 Rule 6, Order 51 of the *Civil Procedure Rules* as well as Articles 49, 50 and 159 (2) (d) of *the Constitution*, John Angii Esiba (the Applicant) seeks the following order.
 1. Spent
 2. That this Honourable Court be pleased to grant the Applicant leave to file an appeal out of time against the judgment delivered on July 28, 2022 by Hon. Lady Justice A. Omollo.
 3. That costs of this application be in the cause.
4. The application is premised on the grounds set out therein and is also supported by the Applicant's affidavit dated November 2, 2022.
5. The gist of the application is that the Applicant is aggrieved by the judgment dated July 28, 2022 and wishes to appeal. That his appeal has overwhelming chances of succeeding and the delay was due to



the fact that the Court was on recess. That it is in the interest of justice that the application be allowed and “the appeal herein will not prejudice any of the parties involved in the matter.”

6. The application is opposed and the Respondent (Heneria Adipo Ogeda) through his counsel Mr Jumbafiled grounds of objection describing it as an abuse of the due process of this Court and suffering from laches.
7. The application has been canvassed by way of written submissions. The same have been filed by the Applicant acting in person and by Mr Jumbainstructed by the firm of Balongo & Company Advocatesfor the Respondent.
8. I have considered the application, the grounds of objection and the submissions.
9. Although counsel for Respondent has submitted that this Court has no jurisdiction to consider this application and that the jurisdiction is vested in the Court of Appeal, Section 7 of the [Appellate Jurisdiction Act](#) is very clear. It reads:

“The High Court may extend the time for giving notice of intention to appeal from a judgment of the High Court or for making an application for leave to appeal or for a certificate that the case is fit for appeal, notwithstanding that the time for giving such notice or making such appeal may have already expired: Provided that in the case of a sentence of death no extension of time shall be granted after the issue of the warrant for the execution of that sentence.”

10. It is clear therefore that under Section 7 of the [Appellate Jurisdiction Act](#), this Court has the power to not only extend time to give a notice of intention to appeal from it’s judgment and also for leave to appeal. The Court of Appeal exercises similar jurisdiction under Rule 4 of it’s *Rules*.
11. However, in this case, the Applicant has already filed a Notice of Appeal dated August 22, 2022 and lodged in this case on the same day although it bears two Court seals one dated August 8, 2022 and another dated November 3, 2022. The Registry must up their act. A document cannot be lodged in court on three different dates. Nonetheless, going by the date when the Notice of Appeal was signed by the Deputy Registrar, the proper date is August 22, 2022. That Notice of Appeal ought to have been lodged in this Court’s Registry within 14 days from July 28, 2022 when the judgment was delivered.
12. While this court has the jurisdiction, like the Court of Appeal, to extend time, it can only do so on good grounds. To begin with, there is no proper Notice of appeal filed herein. And even if there was, the Applicant has not been candid as to why this Court should exercise its discretion in his favour. The excuse that the Court was on Vacation in August is really a lame one. This Court’s Registry, just like any others, remain open even during the vacation. And whereas the Judges proceed on vacation, the Registry remains open for normal business including filing of any proceedings. And should there be any urgent application requiring to be considered by a Judge, there will always be a Judge on duty.
13. Extension of time is not a right. It is a discretionary remedy and as was held in *Leo Sila Mutiso -v- Rose Hellen Wangari Mwangi* [1999] E.A. 231, some of the considerations that the Court will take into account include the length of the delay and the reasons for such delay. In this case, the Judgment was delivered on July 28, 2022 in open Court in the presence of both Ms Achola for the current Applicant and Mr Were holding brief for Mr Jumba for the current Respondent. There is no explanation why this Notice of Appeal was lodged on August 22, 2022 well beyond the 14 days allowed by Rule 75 (2) of the [Court of Appeal Rules](#). And since the said Notice of Appeal is defective, it cannot be the basis upon which any application to file an appeal out of time can be considered.



14. Ultimately therefore, the Chamber Summons dated November 2, 2022 is devoid of any merit. It is accordingly dismissed with costs.

BOAZ N. OLAO

JUDGE

2ND FEBRUARY 2023

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT ON THIS 2ND DAY OF FEBRUARY 2023.

Mr. Jumba for Respondent

Respondent Absent

BOAZ N. OLAO

JUDGE

2ND FEBRUARY 2023

