



**Igamba v Muchiri (Environment & Land Case 1352 of 2016)
[2023] KEELC 20536 (KLR) (5 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20536 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 1352 OF 2016
LN MBUGUA, J
OCTOBER 5, 2023**

BETWEEN

JAMES MBOCHI IGAMBA PLAINTIFF

AND

ESTHER NYAMUIRU MUCHIRI DEFENDANT

RULING

1. Before me is the plaintiff's application dated 27.1.2023 seeking leave to appeal out of time against the judgment delivered by this court on 28.7.2022. The plaintiff avers that he was aggrieved by the said ruling and he instructed his advocates to lodge an appeal but they didn't. He now has a new advocate who advised him that the court has powers to allow him to lodge an appeal.
2. In opposition to the application, the defendant filed a Notice of Preliminary Objection dated 17.4.2023 as well as a Replying Affidavit dated 23.6.2023 where she avers that the reason for the delay in filing the appeal has not been adequately explained. Thus she will be greatly prejudiced if the application is allowed. She avers that she has refunded back all the deposit paid by the plaintiff.
3. The parties were directed to file their submissions by 10.8.2023, but there was no compliance with the said directions.
4. The provisions of Section 7 of the *Appellate jurisdiction Act* empowers this court to extend time to lodge a notice to appeal, and the Court has unfettered discretion in granting leave to file such an Appeal out of time. However there must be some material placed before the court to enable its discretion to be so exercised. The applicant seeking enlargement of time to file an appeal must show good cause for doing so.



5. In the case of *Fabim Yasin Twaha v Timamy Issa Abdalla & 2 others* [2015] eKLR, the court had this to say on the issue of extension of time to appeal.

“Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party, at the discretion of the Court. A party who seeks extension of time has the burden of laying a basis, to the satisfaction of the Court; Whether the Court should exercise the discretion to extend time, is a consideration to be made on a case- to- case basis”.

6. The plaintiff has not given any plausible account of the nature and extent of the follow up he was undertaking with his erstwhile advocate for a period of half a year. It follows that the delay in filing the appeal has not been adequately explained. The application dated 27.1.2023 is hereby dismissed with costs to the defendant.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 5TH DAY OF OCTOBER, 2023
THROUGH MICROSOFT TEAMS.**

LUCY N. MBUGUA

JUDGE

In the presence of:-

Ndungu for Plaintiff

Gichamba for Defendant

