



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**MISC. APPLICATION NO. 20 OF 2020**

**EDWARD KITHELA.....APPLICANT**

**VERSUS**

**JANICE KAUNDU .....RESPONDENT**

**RULING**

1. Through a notice of motion dated **10.8.2020** the applicant seeks under **Section 79 G** of the **Civil Procedure Act** for leave to appeal against a Land District Tribunal case No. 1 of 2007 delivered on **1.8.2007**.
2. The application is based on the ground that the applicant was not aware when the award was read out and secondly that the same was illegal.
3. In support of the motion Edward Kithera swore an affidavit on 10.8.2020 in which he has attached the ruling, the order made by the court on 1.8.2019, the proceedings and the search dated 10.9.2019.
4. In ***Naomi Wangechi Gitonga & 3 Others –vs- IEBC & 17 Others [2018] eKLR***, the Supreme Court of Kenya held that an application for extension of time where the applicant fails to give reasons for the delay is not tenable and should be dismissed.
5. In the instant case, the applicant is coming to court 13 years from the date the award was made. The reasons given are that he was not aware of the delivery until surveyors came to his property in November, 2019. The court record shows he was present at the delivery of the ruling but now denies it, claims he was financially unstable and took time to engage his lawyers. A delay of close to 13 years is quite inordinate. If indeed the suit property was so dear and valuable to the applicant, my considered view is that he would have made reasonable steps within reasonable time to safeguard his rights.
6. Similarly there would be no basis for the court to doubt the courts record that the applicant was present at the time the award was read. The applicant has not demonstrated how there would have been an error by the court to state his presence when he was not present at all.
7. Again if the surveyors came to his premises in November 2019, still it took the applicant another nine months to move to court and seek for the orders of extension of time.
8. In ***David Dachi Akuku –vs- Jane Aketch Ondoro [2021]*** the court held **Article 10 (2) (b)** of the **Constitution** that equity aids the vigilant and not the indolent and delay defeats equity all which shall be protected and protected.
9. Though this court has discretion under **Section 1A, 1B & Section 79 (G)** of the **Civil Procedure Act**, the same must be exercised judicially and to meet ends of justice. The ends of justice militates against granting the orders sought.
10. I find no merits in the application. The same is dismissed with costs.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 20<sup>TH</sup> DAY OF DECEMBER, 2021**

**In presence of:**

**NO APPEARANCE FOR PARTIES**

**COURT ASSISTANT – KANANU**

**HON. C.K. NZILI**

**ELC JUDGE**