



Shajanand Holdings Limited v Atieno (Suing as the Administrator of the Estate of Alai Okulo alias Alayi Okulo) & another (Environment and Land Miscellaneous Application E026 of 2025) [2025] KEELC 4567 (KLR) (17 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4567 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E026 OF 2025

E ASATI, J

JUNE 17, 2025

BETWEEN

SHAJANAND HOLDINGS LIMITED APPLICANT

AND

FIBI ATIENO (SUING AS THE ADMINISTRATOR OF THE ESTATE OF ALAI OKULO ALIAS ALAYI OKULO) 1ST RESPONDENT

COUNTY LAND REGISTRAR, KISUMU 2ND RESPONDENT

RULING

1. This ruling is in respect of the Notice of Motion application dated 28th April, 2025 brought pursuant to the provisions of Section 79G of the Civil Procedure Act, Order 50 Rule 6 and Order 51 Rule 1 of the Civil Procedure Rules 2010.
2. The application seeks for orders that the Applicant be granted leave to appeal out of time against the judgement delivered on 17th January, 2025 in Kisumu CM ELC Case No. E026 of 2024 and that costs of the application be provided for.
3. The application was unopposed. Affidavit of Service sworn by Bruce O. Odeny Advocate on 3rd June, 2025 shows that the Respondent was served with the application via email on 22nd May, 2025. Counsel urged the court to allow the application.
4. I have considered the application. The grounds upon which it is brought are that the trial court delivered judgement in Kisumu CMC ELC NO.026 of 2024 without notice to the Applicant. That the Applicant only got to know that the judgement had been delivered when the 1st Respondent forwarded a cheque to the Applicant's Advocate's office in settlement of the decretal sum on 2nd April, 2025. That the statutory period for filing appeal had elapsed by then. That the delay in filing the appeal is excusable and that the appeal to be lodged has high chances of success.



5. The law allows the court to enlarge time for filing appeal where sufficient cause for the delay is demonstrated. The proviso to section 79G of the *Civil Procedure Act* states; -

“Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.”

6. The grounds to consider in an application for leave to file appeal out of time include:

- i. the explanation, if any, for the delay,
- ii. the merits of the contemplated action;
- iii. whether the appeal is arguable.
- iv. whether or not the Respondent can be adequately compensated in costs for any prejudice that may be suffered as a result of the exercise of discretion in favor of the applicant.

7. In the present case, I find that sufficient explanation has been given why the appeal was not filed within the time provided. There is no demonstration of any prejudice that the Respondents are likely to suffer if the orders sought are granted as the application is unopposed.

8. The court finds that the application is merited and hereby allows it as follows:

- i. Leave is hereby granted to the applicant to file appeal against the judgement in Kisumu CMC ELC Case No. E026 of 2024 out of time.
- ii. The appeal be filed within 14 days hereof.
- iii. No orders as to costs.

Orders accordingly.

RULING, DATED AND SIGNED AT KISUMU AND READ VIRTUALLY THIS 17TH DAY OF JUNE, 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:

Maureen - Court Assistant.

No appearance for the Applicant.

No appearance for the Respondent.

