



**Abubakar v Buke (Miscellaneous Application E006 of 2023)
[2025] KEELC 203 (KLR) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 203 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
MISCELLANEOUS APPLICATION E006 OF 2023
LC KOMINGOI, J
JANUARY 30, 2025**

BETWEEN

KAMARIA HUSSEIN ABUBAKAR APPLICANT

AND

SAMARA BUKE RESPONDENT

RULING

1. This is the Chamber Summons dated 23rd September 2023 brought under;

(Article 25, 48, and 159 (2) (d) of the Constitution of Kenya, 2010, under Section 65 (1) (b) of the Civil Procedure Act, Order 42 Rule 1 and 2 of the Civil Procedure Rules and all other enabling Laws of Kenya).
2. It seeks orders;
 1. Spent.
 2. Spent.
 3. That the Applicant be and is hereby granted leave to appeal against the Judgement delivered on 31st July, 2023 by Honourable L.L. Gicheha.
 4. That upon grant of leave, the applicant be allowed to file appeal out of time.
 5. Costs be in cause.
3. The grounds are on the face of the Application and are set out in paragraphs 1 to 9.
4. The Application is supported by the Affidavit of Kamaria Hussein Abubakar, the Applicant herein, sworn on the 20th September 2023.



5. The Application was canvassed by written submissions. It is the Applicant's submissions that the Learned Trial Magistrate was on transfer during the delivery of the Judgement. That no link was provided for the said date. The judgement was delivered in the absence of the parties.

6. It is her case that she became aware of the judgement on the 1st September 2023.

7. Counsel has relied on Section 79 G of the Civil Procedure Act, which provides that;

“Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order”.

8. Counsel also submitted that this Honourable court has unfettered discretion to extend the time for filing an appeal.

He has put forward the case of APA Insurance Co. Limited v Michael Kinyanjui Muturi (2016) eKLR which quoted with approval the decision of Odek JJA in the case of Edith Gichungu Koine v Stephen Njagi Thoithi (2014) eKLR.

He prays that the Application be allowed.

9. I have considered the Chamber Summons, the affidavit in support, the response thereto, the written submissions and the authorities cited. The issue for determination is whether this application is merited.

10. I have considered the reasons advanced by the Applicant. I note that the Judgement was delivered on the 31st July 2023 in the absence of the parties. It is not clear whether the parties were aware of the date of delivery of the Judgement.

11. In the circumstances I find merit in this application and the same is allowed in the following terms;

- a. That the Applicant is hereby granted leave to file the appeal out of time against the Judgement delivered on 31st July 2023 by Honourable L.L. Gicheha.
- b. That the Applicant do file a Memorandum of Appeal and the Record of Appeal within 30 days from the date of this ruling. In default the leave granted herein shall be considered to have lapsed automatically.
- c. That costs of this application be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 30TH DAY OF JANUARY 2025.

L. KOMINGOI

JUDGE.

In the presence of:

N/A for the Applicant.

N/A for the Respondent.

Court Assistant – Mutisya.

