



Orto & another v Ali (Environment & Land Miscellaneous Case 15 of 2022) [2024] KEELC 1450 (KLR) (18 March 2024) (Ruling)

Neutral citation: [2024] KEELC 1450 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO
ENVIRONMENT & LAND MISCELLANEOUS CASE 15 OF 2022**

PM NJOROGE, J

MARCH 18, 2024

BETWEEN

ADAN ISACK ORTO 1ST APPLICANT

PAUL HIRBO ISATU 2ND APPLICANT

AND

DAMBALA ABUDO ALI RESPONDENT

RULING

1. This application is dated 16th December, 2022 and seeks orders:
 1. That the time within which the Applicants should file their appeal be enlarged.
 2. That the costs of this application abide the outcome of the appeal.
2. The application is supported by the affidavit of Adan Isack Orto, the 1st applicant and has the following grounds;
 1. That the lower court judgment was delivered on 8th April, 2022 and proceedings were thereafter applied for and paid for on 11th April, 2022.
 2. That it was not until 1st August, 2022 when the proceedings were ready for collection long after the thirty (30) day period had lapsed.
 3. That the Applicants herein, being lay persons then proceeded under the assumption that because the time had lapsed, their appeal was effectively locked out.
 4. That it was late in December this year that the Applicants, who had acted in person in the lower court, learnt from advocate on record that they could actually file an application for enlargement of time especially owing to the fact that the delay was not occasioned by the Applicants but by the court.



5. That the Applicants instantly appointed the counsel on record on 15th December, 2022 to file this instant Application without any further delay.
 6. That the intended appeal is not frivolous and has high chance of success.
 7. That it is in the interests of justice that the Applicants be allowed to appeal against the said judgment.
 8. That the respondent will not be prejudiced if the said leave is granted.
3. The application was canvassed by way of Written Submissions.
 4. More or less the submissions filed by the applicant reflect the grounds contained in the application (Op.Cit). The applicant has cited the cases of:
 - a. *Nicholas Kiptoo Arap Korir Salat Versus IEBC & 7 Others [2014]* eKLR.
 - b. *Belinda Mwai & 9 Others Versus Amos Wainaina [1979]* eKLR.
 - c. *Vishva Stone Suppliers Company Limited Versus RSR Stone Limited [2020]* elk to demonstrate that the orders sought in this application are merited.
 5. The Respondent has opposed the application. His advocate asserts that the impugned judgment has significantly been executed. He says that the applicant applied for the lower courts proceedings well after the period stipulated by the law. He says that the applicants have not demonstrated why the orders sought in this application should be granted. He also says that even after the applicants obtained typed copies of the proceedings in the lower court; it took them 5 months to file this application. The Respondent accuses the applicants of having perpetrated inordinate delay.
 6. I have carefully gone through the pleadings proffered by the parties. For the applicants to be granted the orders sought in this application they must demonstrate to the satisfaction of this court that there was a cogent reason or reasons for them to be excused from the application of the statutorily stipulated time for a possible appeal to be filed. I find that I am unable to exercise my discretion in favour of the applicants. I do note that the applicants do not unequivocally own up to the fact that they only applied for the lower courts proceedings well after the statutorily stipulated time had expired. Even after receiving the typed proceedings, it took them 5 months to file this application.
 7. In the circumstances, I issue the following orders;
 - a. This application is dismissed.
 - b. Costs shall follow the event and are awarded to the respondent.

DELIVERED IN OPEN COURT AT ISIOLO THIS 18TH DAY OF MARCH, 2024 IN THE PRESENCE OF:

Court assistant: Balozi/Rahma

Miss Nyasani holding brief for Odhiambo for the Appellant.

Miss Kaaria holding brief for Nelkon Misati for the Respondent.

HON. JUSTICE P.M NJOROGE

JUDGE

