



REPUBLIC OF KENYA



**Sabha v Dhingra (Environment & Land Miscellaneous Case  
E108 of 2023) [2024] KEELC 1351 (KLR) (12 March 2024) (Judgment)**

Neutral citation: [2024] KEELC 1351 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND MISCELLANEOUS CASE E108 OF 2023**

**LN MBUGUA, J  
MARCH 12, 2024**

**BETWEEN**

**SHREE SANATAN DHARAM SABHA ..... APPLICANT**

**AND**

**RAMESH C. DHINGRA ..... DEFENDANT**

**JUDGMENT**

1. This miscellaneous suit was filed by way of a Notice of Motion Application dated 18.10.2023 whereby the Applicant is seeking leave to file an appeal against the judgment delivered on 11.8.2023 in BPRT Case No. E806 of 2022.
2. The Applicant who is the alleged Landlord contends that they wrote to the tribunal requesting for the Judgment, but the said request was not assessed until 28.8.2023. On 18.9.2023, he discussed the issue of lodging an appeal with his advocates after getting a legal opinion on the matter. He contends that the appeal raises substantive points of law and has overwhelming chances of success.
3. The Tenant respondent opposed the suit by way of Grounds of opposition/Preliminary Objection dated 16.11.2023 where he avers that; the judgment in question was based on a preliminary issue hence leave to appeal was required in tandem with the provisions of Order 43 rule 1 (3) of the Civil Procedure rules, that the application has been brought under wrong provisions of law, that there was inordinate delay of 90 days in filing this application, and that there are other pending suits between the parties.
4. The issue falling for determination is whether the applicant should be granted an opportunity to lodge an appeal. To this end, the court has considered the preliminary objection lodged by the respondent as a response to the application.
5. The court has duly considered the rival arguments including the submissions of the respondent dated 24.1.2024. It is noted that the applicant did not file submissions as directed by the court.



6. One of the issues raised in the Preliminary Objection is that the wrong provisions of law were cited in the application at hand. That appears to be true, as the cited provisions of law, that is order 42 of the Civil Procedure Rules and Section 78 of the Civil Procedure Act do not relate to the matter at hand. The legal regime governing the extension of time to appeal is to be found at Section 79G of the Civil Procedure Act See- Nginyanga Kavole v Mailu Gideon [2019] eKLR.
7. That notwithstanding, as long as a party's invocation of the wrong provisions of law is not made in bad faith, meant to mislead or otherwise cause injury or prejudice to the other side, the court will not dismiss an application solely on account of citation of the wrong provisions of law- See Joseph Kipkemboi Tanui v Chief Defence Forces & 2 others [2020] eKLR, Crown Paints (Kenya ) Limited v. Dry Associates Limited ( 2015) eKLR and Thomas Ratemo Ongeru & 2 Others vs. Zachariah Isaboke Nyaata & Another ( 2014) eKLR.
8. The Constitution of Kenya also implores the courts to render substantive justice without undue regard to procedural technicalities. To this end, I hereby proceed to consider the merits of the application.
9. Another issue has been raised by the respondent that leave was required to lodge an appeal as stipulated under Order 43 of the Civil Procedure rules. However, a perusal of the judgment of the tribunal at paragraph 2 reveals that the matter was heard fully before the tribunal, only that the final judgment was determined on the basis of jurisdiction. Thus the applicant's right to lodge an appeal was a matter of a right.
10. In the case of Fabim Yasin Twaha vs 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”.

11. I find that the applicant has given a plausible account of how they engaged the trial court and their advocate in order to commence the process of appeal, thus they have demonstrated seriousness to lodge the appeal.
12. In the end, I find that this court has inherent powers to do justice and in this case, the dictates of justice demand that the applicant be given a chance to ventilate his grievances. The suit succeeds in the following terms;
  - i. The applicant is hereby granted leave to file and serve the memorandum of appeal within 14 days from date of delivery of this judgment failure to which the orders granted herein shall lapse.<sup>3</sup>
  - ii. The applicant is condemned to pay the costs of this suit.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 12<sup>TH</sup> DAY OF MARCH, 2024 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**

M/s Murugi holding brief for Mr. Okulo for Applicant



Ongocho holding brief for Kopere for Respondent

Court assistant: Judith

