



**Kenya Power & Lighting Co. Ltd v Tuli (Environment and Land Case E013 of 2024) [2024] KEELC 14198 (KLR) (18 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 14198 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MIGORI  
ENVIRONMENT AND LAND CASE E013 OF 2024  
GMA ONGONDO, J  
NOVEMBER 18, 2024**

**BETWEEN**

**KENYA POWER & LIGHTING CO. LTD ..... APPLICANT**

**AND**

**ALBERT ORONGO TULI ..... RESPONDENT**

**RULING**

1. This ruling is in respect of an application by way of Notice of Motion dated 9<sup>th</sup> September 2024 brought under, *inter alia*, sections 3A, 79G and 95 of the [Civil procedure Act](#) Chapter 21 Laws of Kenya and Order 42 Rule 6 of the [Civil Procedure Rules 2010](#) by the applicant through Wamaasa, Masese and Nyamwange & Company Advocates for;
  - a. Spent
  - b. Spent
  - c. That the Honourable court be pleased to grant leave and extend time to the applicant to file its appeal out of time in respect of the Ruling dated 29/05/2024 and signed on 06/6/2024 in Rongo CM ELC case No. 16 of 2019. *Albert Orondo Tuli v Kenya Power and Lighting Company Ltd* and the applicant to file the appeal within the timelines that will be ordered by the Honourable court or in the alternative the annexed draft Memorandum of Appeal be deemed as properly filed upon the payment of the court filing fees.
  - d. That the Honourable court be pleased to grant stay of proceedings in Rongo CM ELC Case No. 16 of 2019; *Albert Orondo Tuli v Kenya Power and Lighting Company Ltd* pending the hearing and determination of the intended Appeal herein.
  - e. That costs of the application be in the appeal



2. The application is anchored on an affidavit of 23 paragraphs sworn on even date by Joseph Muchai, the applicant's legal officer with a copy of a notice dated 13<sup>th</sup> May 2024 [JM-1] annexed thereto and 21 grounds which include;
  - i. That the applicant's Advocate were on the 26<sup>th</sup> Day of August 2024 served with the ruling dated 29<sup>th</sup> May 2024, when the court was on leave, and signed on the 6<sup>th</sup> day of June 2024, by the respondent's / plaintiff's which showed that the court had dismissed the applicant's application to have the witness statement admitted on record but the trial court omitted to deal with the other limb of the application for the court to visit the locus in quo/the disputed property
  - ii. That the applicant is totally dissatisfied with the above development of events and he has prepared a draft memorandum of appeal annexed to the supporting affidavit which memorandum of appeal raised serious, weighty and triable issues including limitation of the non-derogable right of access to justice and fair hearing which issues are worth of this honourable court's consideration.
  - iii. That the applicant subject to the court's order is willing to abide by any such conditions that may be imposed by this honourable court.
3. The respondent was duly served with the application as disclosed in the affidavit of service filed on 9<sup>th</sup> November 2024 herein.
4. Therefore, the respondent was made aware of the existence of this application. However, he failed to respond to the application; see *Ogada v Mollin* [2009] 620 KLR.
5. The applicant has sought, *inter alia*, leave and extension of time to appeal out of time the trial court's ruling delivered on 29<sup>th</sup> May 2024. It is trite law that the applicant has an undoubted right of appeal; see *Butt v Rent Restriction Tribunal* [1979] KLR that;
6. In the circumstances, it would not be right for the suit before the trial court and the prospective appeal to run simultaneously.
7. A fortiori, the application is steadfast and meritorious. The same is hereby allowed in terms of orders 3 and 4 sought therein as set out in paragraph 1 [c] and [d] hereinabove.
8. Costs of the application to abide the outcome of the prospective appeal.
9. To meet the ends of justice, the applicant's counsel shall lodge and serve the prospective appeal within the next sixty days from this date failure of which the orders granted in the application to lapse automatically without further orders.
10. It is so ordered.

**DATED AND DELIVERED AT MIGORI THIS 18<sup>TH</sup> DAY OF NOVEMBER 2024.**

**G M A ONGONDO**

**JUDGE**

Present;

Ms Cheloti learned counsel for the applicant

Tom Maurice, court assistant

