



REPUBLIC OF KENYA



KENYA LAW
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**Bodo v Owili (Civil Appeal E113 of 2024)
[2024] KEHC 11583 (KLR) (26 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11583 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL APPEAL E113 OF 2024
RE ABURILI, J
SEPTEMBER 26, 2024**

BETWEEN

JASON ONYANGO BODO APPELLANT

AND

REUBEN OREM OWILI RESPONDENT

*(Arising from the Ruling of Hon. Nyigei, PM in Kisumu
CMCC Misc. No. 55 of 2020 rendered on 21st August, 2023)*

RULING

1. I have perused the application dated 18th September 2024, the grounds and supporting affidavit sworn by Mr. Bagada advocate.
2. I have also perused the annexure thereto which is the Ruling in Kisumu HCCC Misc. No. E113 of 2024 wherein leave to appeal out of time was granted to the Appellant on 30th May 2023 by M. S. Shariff J.
3. I observe that the Applicant seeks for review and or setting aside of the orders made by this court on 16th August 2024 summarily rejecting the appeal on the grounds that it was filed out of time without leave of court being obtained and secondly, that there was no order for leave annexed.
4. It is indeed true that the appeal was summarily rejected on account of there being no leave to appeal out of time and no such order for leave was annexed to the Memorandum of Appeal.
5. The Appellant has now availed to this court the Ruling wherein leave to appeal out of time was granted. The mistake was therefore not of this court but of the Appellant's counsel who did not even cite in the body of the Memorandum of Appeal that leave to appeal out of time had been granted by the court in a Miscellaneous Civil Application No. E181 of 2023.



6. That being the case, I hereby exercise discretion and review and set aside the order of 16th August 2024 summarily rejecting this appeal and substitute thereto with an order reinstating the appeal for hearing with a rider that this is subject to the court confirming from the lower court proceedings that either no leave to appeal was necessary from the Ruling of 21st August 2023 in CMCC Misc. No. 55 of 2020 or that leave to appeal from that order or ruling was sought and or obtained.
7. I direct the Registry to call for the lower court for reconsideration of whether or not to admit the appeal herein.
8. Mention on 31st October 2024 to confirm availability of the lower court file.
9. Registry to notify the Applicant's counsel forthwith pending typing and uploading of this Ruling and order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 26TH DAY OF SEPTEMBER, 2024.

R. E. ABURILI

JUDGE

