



**Barasa v Ojwang & another (Miscellaneous Application
E051 of 2021) [2023] KEHC 18074 (KLR) (26 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 18074 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
MISCELLANEOUS APPLICATION E051 OF 2021
WM MUSYOKA, J
MAY 26, 2023**

BETWEEN

BEATRICE NASIMIYU BARASA APPLICANT

AND

NDINDI OJWANG 1ST RESPONDENT

ROBERT JARED WEKESA 2ND RESPONDENT

RULING

1. I am called upon to determine a Motion, dated 16th June 2021. It seeks 2 principal orders: leave for Munyaga Githaiga Advocates LLP to come on record for the applicant after judgment, and for leave to file appeal out of time. The judgment at the trial court, in Busia CMCCC No. 132 of 2018, was delivered on 19th January 2021. The applicant complains that her Advocates, then on record, did not alert her of the date of the judgment, and when she was eventually informed of the same, her relationship with her Advocates became strained. She wished to appeal and she had a good case. She avers that delay to file appeal was also caused by the Covid-19 pandemic, as court operations scaled down. She also explains that her husband fell ill, and she had to attend to him in Nairobi.
2. In response to the summons, the 1st respondent states that the Advocates for the applicant, at the trial court, had written to his Advocates a letter, dated 28th July 2021, drawing the attention of his Advocates to the contents of that judgment. Costs were agreed upon. He asserts that the plea for time to file appeal is an afterthought. He avers that he was aware that the courts had scaled down their operations on account of Covid-19 pandemic, but asserts that, at the time judgment was delivered, the courts had resumed normalcy.
3. The application was canvassed by way of written submissions. I have read through the submissions placed on record by both sides, and I have noted the arguments made.



4. On the first issue, on leave for Munyaga Githaiga Advocates LLP to come on record for the applicant after delivery of judgment, I do not find necessity for this prayer. The requirement for that does not apply here. The applicant's former Advocates are not on record in this cause, and, therefore, the issue of substituting them does not arise. The prayer is of relevance only where the previous Advocates are on record in a matter conducted to completion. This cause has just been initiated. There is no judgment on record here. The prayer is only of relevance to Busia CMCCC No. 132 of 2018. It is something that I need not tax my mind over.
5. The more important prayer is that for leave to file appeal out of time. Such leave is granted at the discretion of the court, based on the circumstances. The applicant explains that she was not notified of the judgment in time to decide on her next course of action. That she was also inconvenienced by the Covid-19 pandemic, and by the ill-health of her husband, who she had to attend to. It could be that it was the Advocates for the applicant who notified the respondents of the judgment, but it could be true that the same was not shared with the applicant herself, or that she did not agree with her Advocates on the way forward. Covid-19 was still raging at about that time. A party is entitled to be aggrieved by a determination of a court, and to seek the second opinion of a higher court. I shall, in the circumstances, give the applicant benefit of the doubt.
6. I shall, accordingly, allow the application, dated 16th June 2021, in terms of extending time to file appeal, or granting leave to file appeal out of time. I extend time for doing so by 14 days, from the date of this ruling. Order accordingly.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA THIS 26TH DAY OF MAY 2023

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Appearances

Mr. Githaiga, instructed by Munyaga Githaiga Advocates LLP, Advocates for the applicant.

Mr. Otanga, instructed by Bogonko Otanga & Company Advocates for the respondents.

