



**Philip v Ochung (Miscellaneous Civil Case E076 of 2023)
[2023] KEHC 27036 (KLR) (20 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 27036 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
MISCELLANEOUS CIVIL CASE E076 OF 2023
KW KIARIE, J
DECEMBER 20, 2023**

BETWEEN

OCHUNG TOM PHILIP APPLICANT

AND

MICHAEL HARRISON OCHUNG RESPONDENT

RULING

1. The applicant moved the court by way of a Notice of Motion dated 9th October 2023. The application is brought under sections 1A, 1B, and 3A, of the Civil Procedure Act, Order 50 Rule 6 of the Civil Procedure Rules & sections 27 & 28 of the Limitations of Action Act. The applicant is seeking the following orders:
 - a. That this court be pleased to grant leave to the applicant/ intended appellant to file an appeal against the judgment of the trial court out of time.
 - b. This honourable court be pleased to extend the time within which the applicant/intended appellant ought to have filed his appeal against the judgment of the said court.
 - c. That this court be pleased to order the mention of this case together with Civil appeal number E022 of 2022 which is coming up for mention on the 26th October 2023 for filing of submission on preliminary objection. [Spent]
 - d. That costs of this application be provided for.
2. The application is premised on the following grounds:
 - a. That the delay was occasioned by an inadvertent error on the part of the advocate of the applicant.
 - b. That the applicant has good grounds of appeal.



3. The application was opposed on the following grounds:
 - a. That there are no good reasons which have been advanced.
 - b. That the application is aimed at delaying the ends of justice.
4. I have read both the grounds of the application and the opposition and the rival submissions. My considered view is that the application is merited more so, this being a succession matter, which requires to be brought to a finality without undue regard to technicalities. The application is allowed and the applicant is directed to file and serve the appeal within 14 days.
5. Costs will abide by the outcome of the appeal.

DELIVERED AND SIGNED AT HOMA BAY THIS 20TH DAY OF DECEMBER 2023

KIARIE WAWERU KIARIE

JUDGE

