



**Nyanye v Ayanga (Miscellaneous Succession Cause 15 of 2021)
[2022] KEHC 11570 (KLR) (22 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 11570 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
MISCELLANEOUS SUCCESSION CAUSE 15 OF 2021**

WM MUSYOKA, J

JULY 22, 2022

BETWEEN

RAMADHAN NYANYE APPLICANT

AND

ROSELYNE AYANGA RESPONDENT

RULING

1. The Motion for determination is dated September 9, 2021. It seeks leave to appeal out of time, with respect to a judgment delivered in Kakamega KCDP No. 1 of 2021. It is brought at the instance of Ramadhan Nyanye Watako.
2. The applicant avers that the impugned judgment was delivered on March 30, 2021. Then again says delivery was May 30, 2021. He was aggrieved by the outcome. He applied for typed proceedings, which were not given to him until August 9, 2021 and he filed the instant application on September 9, 2021. He also alleges that he was ill. He has attached a copy of the draft memorandum of appeal to his application.
3. The respondent, Roselyne Kavoshi, has responded to that application. The affidavit is dated November 4, 2021. She avers that the application was filed after inordinate delay, and no justifiable reason has been given. She discloses that the judgment was delivered on June 30, 2021. She asserts that appeal should have been filed within 30 days from that date. She urges that copies of the typed proceedings have not been attached to authenticate the claims by the applicant about delay. She submits that the attached memorandum of appeal does not disclose any triable issues.
4. The application has been canvassed by way of written submissions. I have read the submissions placed on record by both sides and I have noted the arguments made.
5. This is a straight forward application for leave to file appeal out of time. The impugned judgment was delivered on June 30, 2021, the applicant was furnished with the typed proceedings on August 9, 2021



and he filed this application a month later, on September 9, 2021. He should have filed a certificate of delay, but am mindful of article 159 of the Constitution. I shall overlook the lapse. The delay is not inordinate nor unreasonable, from the date he says he got the proceedings until the date he filed this application. He is unrepresented.

6. I am persuaded, therefore, to exercise discretion in favour of the applicant, and allow herein to file appeal against the said judgment out of time, leave is for 30 days. It is so ordered

**RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA ON THIS
.....22nd.... DAY OFJuly..... 2022**

W.M. MUSYOKA

JUDGE

Mr. Erick Zalo, Court Assistant

Mr. Ramadhan Nyanje, applicant in person.

Mr. Osango, instructed by Osango & Company, Advocates for respondent.

