

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

MISCELLANEOUS CIVIL APPLICATION NO. 70 OF 2017

PO.....APPLICANT

VERSUS

EAO..... RESPONDENT

RULING

1. The applicant moved the court by way of Notice of Motion under Rule 73 of Probate and administration Rules and order 51 Rule 1 of the Civil Procedure Rules. She is seeking the following orders:

a) That leave be granted to the applicant to file an appeal out of time for a decision of the Resident Magistrate in Divorce cause No.3 of 2017 and which was delivered on 11th July 2017.

b) That the costs of the suit be provided for.

2. The application was premised on the following grounds:

a) That the ruling contested was delivered when the applicant was out of the country.

b) That she was aggrieved by the decision.

3. The respondent opposed the application on the following grounds:

a) That the intended appeal was an afterthought and was made after an inordinate delay.

b) That the intended appeal raises no triable issues.

4. I have checked the record and I have noted that the applicant filed this application on 18th August 2017. The contested ruling was delivered on 11th July 2017. The applicant has attached a copy of her passport which confirms that she was out of the country from 22nd May 2017 to 18th July 2017. She cannot be accused of inordinate delay, given the circumstances.

5. Whether the intended appeal raises triable issues cannot be decided at this stage. The court will need to appreciate the entire evidence on record to make that conclusion.

6. From the foregoing, the application is allowed and the applicant given 30 days from the date hereof to file the appeal. Each party to meet own costs.

DELIVERED and SIGNED at BUSIA this 29th day of April, 2019

KIARIE WAWERU KIARIE

JUDGE.