



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

CIVIL MISC. APPLICATION NO. 79 OF 2017

KASYOKA NDIVO & MORRIS NGULI MULI

(Suing as the Legal Representatives of the Estate of

WILLY MUTUA MULI (Deceased) APPLICANT

VERSUS

BUZEKI ENTERPRISES LTD 1ST RESPONDENT

AFRICAN E. AUTO MOBILE COMPANY 2ND RESPONDENT

RULING

1. **Kasyoka Ndivo** and **Morris Nguli Muli** (Suing as the Legal Representatives of the Estate of **Willy Mutua Muli** (Deceased) approached this Court by way of Notice of Motion dated the 7th day of **November, 2017** seeking leave to file an Appeal out of time and that the Memorandum of Appeal annexed to the Application be deemed to have been duly filed.

2. The application is premised on grounds that the duration within which the Appeal was to be filed lapsed and the Applicant has an arguable Appeal.

3. In an affidavit in support of the application **Kasyoka Ndivo** deponed that the Judgment in respect of the **Kitui CMCC No. 148 of 2014** was scheduled to be delivered on the 23rd day of **May, 2017**, but on the stated date the trial Magistrate did not sit therefore the Judgment was to be delivered on notice. Efforts made to get the notice were futile. Thereafter they came to learn that the Judgment was delivered without their notice. When they applied for proceedings they did not get them on time.

4. The application is unopposed. The Respondent's Advocates were duly served but they neglected and/or refused to respond.

5. Time within which an Appeal ought to be filed is provided for in **Section 79G** of the **Civil Procedure Act** that stipulates thus:

“Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order:

Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.”

6. In order for an Appeal to be admitted out of time there must be a sufficient cause that inhibited a party from filing the Appeal within the timeline set.

7. Annexure '**KNP**' is a letter authored by Counsel for the Applicant enquiring about the Judgment. Without any response refuting the allegations set out by the Applicant, I find the Applicant having demonstrated that they were not to blame for not filing the Appeal within the timeline set by statute.

8. In the premises, I grant the Applicants leave to file the Memorandum of Appeal within **15 days**.

9. It is so ordered.

Dated, Signed and Delivered at Kitui this 17th day of April, 2018.

L. N. MUTENDE

JUDGE