



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT BUSIA**

**CIVIL CASE NO. 153 OF 2014 (O.S)**

**BEATRICE OKUMU OMONYA**

**ABRAHIM JEREMIA IRUKAN.....APPLICANTS**

**- VERSUS -**

**RASOMO OSILINGI OMUNYONGOR alias as**

**RASOMO OMUNYONGORI .....RESPONDENT**

**R U L I N G**

1. The application dated 11<sup>th</sup> September 2020 brought under the provisions of sections 1, 1A, 1B, 3, 3A and 63(e) of the Civil Procedures Act and Order 1 & Order 51 of the Civil Procedure Rules seeking the following orders;

**a. Spent**

**b. Spent**

**c. That this Honourable Court be pleased to extend time for filing of the Notice of Appeal against the judgement dated 29/4/2020, of the High Court of Kenya sitting in Busia (Judge A. Omollo, in Environment and Land Court Civil Case No. 153 of 2014 (O.S), Beatrice Okumu Omonya and Anor. vs Rasomo Osilingi Omonyongor Alias Rasomo Omonyongori.**

**d. That costs of this application be in the cause.**

2. The application is supported by the sworn affidavit of Rasomo Osilingi Omonyongor which reiterated the facts stated on the grounds listed on its face *inter alia*;

i. That the judgement was delivered on 29/4/2020 during the period of the Covid-19 pandemic and at a time when the Country was on partial lock down.

ii. That the applicant being an elderly peasant farmer did not have the benefit of accessing the internet to which he would have obtained and known of the delivery of judgement herein.

iii. That the applicant is aggrieved by the judgement of the ELC Court at Busia and is desirous to appeal against the same.

iv. That the applicant stands to suffer prejudice should this application be disallowed as he risks being evicted from L.R No. NORTH TESO/ANGOROMO/474 by virtue of execution of the judgement in Busia HC ELC No. 153 of 2014 (O.S) which property constitutes his only place of abode for over 50 years.

v. That the respondent would suffer no prejudice as he will have an opportunity to oppose the intended appeal and the fact that he already has a judgement in his favour.

vi. That it is in the interest of justice that the application be allowed.

vii. That this application has been made without undue delay given that the applicant came to realize of the existence of the judgement in Busia HC ELC Case No. 153 of 2014 (O.S) on the 2/9/2020 after recovering from his long illness and going to the

Busia High Court Registry to verify the status of his above mentioned case.

3. The application is opposed by the plaintiff's grounds of opposition filed on 21<sup>st</sup> October 2020. The grounds stated that;

i. That there are no sufficient grounds given by the applicant and did not file notice of appeal on time. Service was duly represented by a legal counsel.

ii. That the delay is inordinate.

iii. That this court lacks jurisdiction to grant prayer 3 of the notice of motion under rule 4 of the court of appeal rules.

4. The defendant/applicant has cited the overriding provisions of the Civil Procedure Act in asking this Court to exercise her discretion in extending time for his filing of the appeal against her decision out of time. The applicant was required to file a notice of appeal within 14 days of the date of the decision complained. Rule 4 of the Court of Appeal Rules (Cap 9) provides thus; **"The Court may, on such terms as it thinks just, by order extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended."**

5. The Court of Appeal Rules gives powers to the said court to extend time for doing things computed under its Rule 3. This court in exercising its discretion cannot confer jurisdiction upon itself to extend time where there is no statutory provision granting it such powers. There are several applications finalised by the Court of Appeal to demonstrate that an application such as this ought to be brought before that Court (Court of Appeal). For instance; the case of *Loise Chemutai Ngurule Vs Winfred Kimung'en & 2 others (2015) eKLR; KENHA Vs Joseph Ndolo Mutua (2020) eKLR* and *Leo Sila Mutiso Vs Hellen Wangari Mwangi (1999) 2 EA 231*.

6. In my opinion, this Court thus lacks jurisdiction to grant the main orders of extension of time being sought. Consequently, I decline to grant it and order the **prayer 3** of the application struck out with costs to the plaintiffs/Respondents.

**DATED, SIGNED AND DELIVERED AT BUSIA THIS 14<sup>TH</sup> DAY OF APRIL, 2021.**

**A. OMOLLO**

**JUDGE**