



REPUBLIC OF KENYA



KENYA LAW
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**Oyabo v Opondo (Miscellaneous Civil Application E001 of 2025)
[2025] KEHC 3418 (KLR) (21 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3418 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
MISCELLANEOUS CIVIL APPLICATION E001 OF 2025**

WM MUSYOKA, J

MARCH 21, 2025

BETWEEN

STEPANO OLIMA OYABO APPLICANT

AND

PAMELA ATIENO OPONDO RESPONDENT

RULING

1. I am tasked with determining an application, dated 22nd January 2025. It seeks enlargement of time for filing appeal, against the ruling of the trial court, in *Busia CMCSC No. E200 of 2020*, of 28th August 2024, for such period as the court may direct or the annexed memorandum of appeal be deemed as duly filed.
2. The grounds, upon which the extension of time is sought, are set out on the face of the application, and include the claim that the applicant is indigent, and only got help from the National Legal Aid office in Kisumu on 22nd January 2025; it is mandatory to seek leave to appeal and leave to appeal out of time; the delay in filing appeal was occasioned by financial difficulty; enlargement of time would not be prejudicial to the respondent; and it would be in the best interests of justice.
3. In his affidavit in support of the application, the applicant regurgitates the grounds on the face of the Motion.
4. The respondent filed grounds of opposition, dated 5th February 2025, where she argues that the intended appeal lacks merit, the delay in bringing it was inordinate and unexplained, the application is improperly before the court, and it is frivolous, vexatious and lacks merit.
5. The parties argued the application orally before me, on 18th February 2025.
6. The only issue for me to determine is whether the application is merited.



7. The provision that the applicant relies on in his pursuit of leave, is section 79G of the Civil Procedure Act, among other provisions, which provides:

“Time for filing appeals from subordinate courts

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.”

8. The court has the discretion to extend time for filing an appeal, but the exercise of that discretion to extend time is not automatic. Sufficient cause must be shown, to warrant exercise of the discretion. The principles were laid out in *Nicholas Kiptoo arap Salat vs. Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR (Ibrahim & Wanjala, SCJJ), a decision of the Supreme Court, premised largely on the Supreme Court Rules, but of relevance to the exercise of similar discretion under the *Civil Procedure Act* and Rules.
9. The principles are that the extension of time is not a matter of right, for it is an equitable remedy, available only to a deserving party; a party seeking exercise of the discretion in its favour must endeavour to demonstrate that they deserve it; the discretion would be exercised on a case to case basis; where delay is alleged to be reasonable, then the reasonableness of the delay must be explained; it ought to be demonstrated that the other parties would not be prejudiced by the exercise of the discretion; and the application must be filed without undue delay.
10. The applicant admits that there is a 4-month delay in the bringing of the instant application. The explanation is that he had financial difficulties, hence, due to lack of funds, he was unable to file the instant application expeditiously. He states that he only got moving in January 2025, after he got help from the National Legal Aid office in Kisumu.
11. Has the delay been adequately explained? Lacking resources to file the application for leave to file appeal out of time may be understandable. There could be concern, though, for the delay between August 2024 and January 2025. 4 months is quite something. But I note that the applicant has come to court in person. He could be given the benefit of the doubt, on account of indigency, so that his right to access justice is not impeded because of the state of being poor.
12. I am alive to the fact that succession to ancestral land is very emotive. Justice would require that parties involved in such litigation ought to be accorded and afforded opportunity to press their cases at every turn, to get closure, upon having been given a chance to be heard at all levels of the systems.
13. There is no need for leave to file appeal, at the High Court, from a decision of the magistrate’s court, for none is required, under section 50 of the *Law of Succession Act*, Cap 160, Laws of Kenya.
14. I shall, accordingly, allow the application, dated 22nd January 2025, by extending the time for filing appeal by 30 days. I shall not deem the memorandum appeal filed herein as duly filed, given that the same was not filed in an appeal file, but in a miscellaneous file. Each party shall bear their own costs. The instant file shall be closed. Orders accordingly.

DELIVERED, DATED AND SIGNED IN OPEN COURT, AT BUSIA, THIS 21ST DAY OF MARCH 2025.



W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Mr. Stepano Olima Oyabo, the applicant, in person.

Advocates

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

