



**Okong'o v Kerubo (Miscellaneous Civil Case 253 of 2022)
[2024] KEHC 4913 (KLR) (6 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 4913 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
MISCELLANEOUS CIVIL CASE 253 OF 2022**

TA ODERA, J

MAY 6, 2024

BETWEEN

DENIS GISEMBA OKONG'O PLAINTIFF

AND

ZIPPORAH KERUBO DEFENDANT

RULING

1. The applicant filed application dated 7.11.22 seeking Leave to file appeal against the decision of C. Ombija SRM in Keroka MCCHCC/E)) /2021 out of time. The decision sought to be appealed from was made on 17th August 2023. He cites challenges in obtaining proceedings, judgment decree and typed proceedings as the reason for delay in filing the intended appeal. The application is based on the annexed affidavit of the applicant in which he annexed a copy of the judgment and the draft memorandum of appeal. He deponed that the delay was caused by difficulty in obtaining the proceedings judgment and decree from court and that it is in the best interest of the minors that the application be allowed.
2. The respondent filed a replying affidavit dated 17.5.23 and said the applicant has not shown that he applied for the proceedings, decree and judgment of the court within the stipulated time. She said the application was made in bad faith.
3. I have carefully considered the application and the response. Parties did not file submissions despite directions being given to that effect. I will nevertheless proceed to determine the application.
5. The principles guiding applications for leave to file appeal out of time were set out by the court of appeal in the case of *Thuita Mwangi V Kenya Airways Ltd* [2003] eKLR. As follows -
 - i) The period of delay;
 - ii) The reason for the delay;



- iii) The arguability of the appeal;
 - iv) The degree of prejudice which could be suffered by the if Respondent the extension is granted;
 - v) The importance of compliance with time limits to the particular litigation or issue; and
 - vi) The effect if any on the administration of justice or public interest if any is involved.
6. In this instant case, the period of delay was about 3 months and the reason was given for the delay is that the applicant had difficulties getting the proceedings, judgment and the decree. There is however to certificate of delay issued by the court administrator nor letters to court requesting for the proceedings.
7. On whether the appeal is arguable, only the draft memorandum of appeal has been annexed the same challenges the sum of Kshs. 20,000/= granted for maintenance, that the court did not look at the means of applicant, limitation of access to children principles of parental responsibility and not considering residence of applicant and respondent to granting access orders. This are arguable issues.
8. This is a children matter and expeditious disposal of children matters cannot be gain said. The applicant has a right to be heard and especially in this case due to its nature. Article 159 of *the constitution* enjoins courts to administer justice without undue technicalities of procedure. I will apply the said Article and allow the application and order that applicant do file and serve the intended appeal within 10 days from today otherwise the orders will lapse.
9. This being a family matter each party shall bear his own costs.

T.A ODERA

JUDGE

DELIVERED VIRTUALLY VIA TEAMS PLATFORM AT KISII IN THE PRESENCE OF: -

Oigo - Court assistant

Parties - Absent.

