



Kubai (Suing as the legal representative of the Estate of Carlin Kayuyu - Deceased) v Nganga (Miscellaneous Civil Application E009 of 2022) [2023] KEHC 21284 (KLR) (9 February 2023) (Ruling)

Neutral citation: [2023] KEHC 21284 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
MISCELLANEOUS CIVIL APPLICATION E009 OF 2022
A. ONG'INJO, J
FEBRUARY 9, 2023**

BETWEEN

BENARD KUBAI (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF CARLIN KAYUYU - DECEASED) APPLICANT

AND

IRENE NJERI NGANGA RESPONDENT

RULING

1. By an application dated June 3, 2022, the applicant sought for leave to lodge an appeal against the judgment in Voi Chief Magistrate's Court Civil Case No. E105 of 2021 out of time. The said judgment was delivered on March 24, 2022 and the reason given for delay in filing an appeal was on account of the Applicant's ill health and on account of delay in supply of the proceedings and judgment in the magistrate's court.
2. The respondents in their replying affidavit sworn by Lilian Munyiri, the Legal Manager of Geminia Insurance Co. Ltd have opposed the application for leave to file appeal out of time.
3. The application was canvassed by way of written submissions. The applicant's submissions are dated October 5, 2022 and the respondent's submissions are dated October 5, 2022.
4. This court has considered the application and respective submissions by the parties and find that the ground that the applicant was sick and that is why he delayed in giving instructions is not very convincing. However, it is clear from the certification of the proceedings that the same was done on May 13, 2022 long after the period within which the applicant ought to have appealed had lapsed.
5. This court finds that the applicants required to have certified copies of the judgement and the proceedings before they could appeal against the decision of the court and a delay of 3 months cannot



be said to be inordinate delay. The application is therefore allowed. The applicant is granted leave to appeal within the next 14 days.

6. Parties to bear their own costs of the application.

**DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS,
THIS 9TH DAY OF FEBRUARY 2023**

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of:

Otolo- Court Assistant

Mr. Ngunjiri Advocate for the Applicant - Present

Mr. Chamwada Advocate for the Respondent - Present

HON. LADY JUSTICE A. ONG'INJO

JUDGE

