



**Agola v Oloo (Miscellaneous Civil Case E013 of 2023)
[2023] KEHC 20769 (KLR) (20 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20769 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
MISCELLANEOUS CIVIL CASE E013 OF 2023
DO OGEMBO, J
JULY 20, 2023**

BETWEEN

HAGGAI ASINDI AGOLA APPLICANT

AND

PAULINE AUMA OLOO RESPONDENT

RULING

1. Haggai Asindi Agola, the applicant herein, has moved this court by way of a Notice of motion Application dated May 31, 2023. The application seeks only.

I order, that;

“ This Honourable court is pleased to grant leave to the applicant to file an appeal out of time from the decree in the Senior Principal Magistrate’s court at Siaya Succession Cause No 61 of 2016.”

2. The application is supported by the Affidavit of the applicant, sworn on May 31, 2023 in which the applicant depones that whereas the lower court delivered the ruling on April 13, 2023, it was not until May 16, 2023 that he was supplied with a copy of the same, well after the lapse of 30 days. That he could not have filed the appeal on time because of this. He urged that he should not be condemned unheard. These are the said submissions that the applicant made in court on July 11, 2023.
3. The application was opposed by the Defendant/Respondent, represented by Mr Okello. The Respondent submitted that the applicant was present when the ruling was delivered and did not take steps till April 27, 2023. That Respondent slept on his rights and the court should not indulge him. And that he even took another 2 weeks after getting the ruling.



4. I have considered the submissions of the 2 sides. This application is brought under section 79 (G) of the Civil Procedure Act. The *proviso* to this section provides;

“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.”

5. It is therefore incumbent on the applicant to show sufficient or good cause on why he failed to file his appeal within 30 days of the ruling and order aggrieved of. The evidence before the court shows that whereas the ruling of the court was delivered on April 13, 2023, it was not until May 16, 2023 that the applicant was supplied with the same. This application for leave to file appeal out of time was then filed on May 31, 2023.

6. From the above, it is clear that the delay, if at all in processing the ruling cannot be visited on the applicant who had no role in the preparation of the court proceedings. It is for this reason that I find that the applicant has given sufficient ground for the failure to file the appeal within the prescribed time. I accordingly find merit in the applicant’s application dated May 31, 2023. I allow the same as prayed in prayer 1 of the same. The applicant to file their intended appeal within 14 days from the date of this ruling. Costs of this application are awarded to the Respondent.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 20TH DAY OF JULY, 2023

D.O. OGEMBO

JUDGE

20.7.2023

Court:

Ruling read out in Court (online) in the absence of the parties.

It is noted that there is Maandamano today.

D.O. OGEMBO

JUDGE

20.7.2023

