

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

MISC. CIVIL APPLICATION NO.504 OF 2016

ROSILINE AYUMA KHISA AND

EMILY NALIAKA OPUKA

(Suing as widows and dependants of the estate of the late

ISAACK KHISA KHANGATI – (DECEASED) APPLICANTS

VERSUS

WEST KENYA SUGAR CO. LTD RESPONDENT

RULING

1. **Rosiline Ayuma Khisa** and **Emily Naliaka Opuka** (herein referred to as the 1st and 2nd applicants respectively) have filed a notice of Motion dated 7TH November 2016 seeking for prayers that they be granted leave to file an appeal out of time in **Butali Principal Magistrate Civil Case No.250 of 2013**. The grounds in support of the application are that judgment was delivered in Butali Principal Magistrate Civil Case No.250 of 2013 on 24th September 2016; that by the time the applicants got to know of the judgment, the time provided for appeal had lapsed; that they, (the applicants) are aggrieved by the said judgment and wish to prefer an appeal and that they have a good appeal with high chances of success.

2. The application is supported by the affidavit of the 1st applicant Rosiline Ayuma Khisa, in which she deponed on the matters stated in the grounds in support of the application. She has in addition annexed a draft memorandum of appeal.

3. The application is also supported by a further affidavit of **Godfrey Nathan Kitiwa**, advocate acting for the applicants, in which he depones that the intended appeal raises triable issues and that it has high chances of success. Further that in any event the respondent has preferred an appeal against the aforesaid judgment and therefore that the respondent will suffer no harm if the applicants are equally allowed to file an appeal. The advocate has annexed copies of proceedings in Butali Principal Magistrate **Civil Case No.504 of 2016** and the respondent's referred to Memorandum of Appeal.

4. I have considered the grounds adduced in support of the application, the affidavits thereof and the attachments annexed thereto. The application was served on the respondent who did not file a response. The application is thereby unopposed. Besides that I find the application to be highly merited. The applicants have given a plausible reason why they did not file the appeal within the stipulated time. In any case the respondent has filed an appeal and it is only fair that the applicants be allowed to file a cross-appeal. The application is thereby allowed.

Costs to be in the cause.

Ruling read, dated and delivered in open court this 9th day of March 2017.

J. NJAGI

JUDGE

In the presence of: