



**Owino v Opiyo & another; Land Registrar Siaya County & 2 others  
 (Interested Parties) (Miscellaneous Application E002 of 2025)  
 [2025] KEELC 6427 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6427 (KLR)

**REPUBLIC OF KENYA  
 IN THE ENVIRONMENT AND LAND COURT AT SIAYA  
 MISCELLANEOUS APPLICATION E002 OF 2025  
 AE DENA, J  
 SEPTEMBER 25, 2025**

**BETWEEN**

**GEORGE OKELLO OWINO ..... APPLICANT**

**AND**

**OSOK OPIYO OMOLO ALIAS ASOK OPIYO ..... 1<sup>ST</sup> RESPONDENT**

**JULIUS OBAM OGOL ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**THE LAND REGISTRAR SIAYA COUNTY ..... INTERESTED PARTY**

**THE DISTRICT SURVEYOR SIAYA ..... INTERESTED PARTY**

**THE ESTATE OF ANYANGO OTOMBO ..... INTERESTED PARTY**

**RULING**

1. The applicant George Okelo Owino vide an application dated 16<sup>th</sup> December 2024 seeks in substance that this Court extend or enlarge the time within which he should file and serve a Memorandum of Appeal outside the prescribed time and that his draft Memorandum of Appeal annexed to the application be deemed as properly filed and served upon payment of court filing fees.
2. It was deposed by the Applicant that the administrator to the estate of Raphael Ogutu Otombo died on 21<sup>st</sup> August 2024. The judgment was delivered on 25<sup>th</sup> October 2024. That he only became aware of the said judgment when the Respondents visited the suit land with a surveyor for subdivision.
3. The Applicant averred further that he went to the Court’s registry, perused the court file, and confirmed the said delivery of the judgment. That upon consultations with his counsel, he filed an



application for substitution of the deceased administrator on 20<sup>th</sup> November 2024 and prayers were granted on 10<sup>th</sup> December 2024.

4. Through his counsel, he caused the instant application to be filed, pleading that the delay was occasioned by circumstances of death and funeral arrangements beyond his control.

### **Submissions**

5. The Respondents did not respond to the application despite service as evidenced by the Affidavit of Service sworn by GEORGE OLUOCH RATHING dated 7/2/2025 and 19/03/2025. The application was heard by way of written submissions. The applicants' submissions are on record dated 16<sup>th</sup> May 2025.
6. Citing the provisions of section 79G and 95 of the *Civil Procedure Act* on the discretionary powers donated to the court to extend time for appeals, it is submitted there is a lawful justification to explain what prevented the Applicant from filing an appeal within the stipulated time after the judgment was delivered. That the applicants were neither aware of the said judgment nor their right of appeal and if they were informed or served the Applicant would have come before the expiry of prescribed time. The cases of Joseph Kakomo Mbenga V Maingi Charles & Another [2018] eKLR) and Dilpack Kenya Limited V William Muthama Kitonyi [2018] eKLR were cited to buttress the application.

### **Analysis and Determination**

7. I have considered the instant application, its supporting affidavit, submissions, as well as the authorities relied upon. I find the issue for determination is whether the instant application has merit.

8. Section 79G of the *Civil Procedure Act* provides that:

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.

9. Arising from the law therefore an applicant seeking enlargement of time to file an appeal or admission of an already filed appeal must show that he has a good and or sufficient cause for doing so. In elaborating the meaning of sufficient cause the court in Feroz Begum Qureshi and Another vs. Maganbhai Patel and Others [1964] EA 633 stated thus:-

There is no difference between the words "sufficient cause" and "good cause".

10. In Daphne Parry vs. Murray Alexander Carson [1963] EA 546 the court had this to state; -

although the provision for extension of time requiring "sufficient reason" should receive a liberal construction, so as to advance substantial justice, when no negligence, nor inaction, nor want of bona fides, is imputed to the appellant, its interpretation must be in accordance with judicial principles. If the appellant had a good case on the merits but is out of time and has no valid excuse for the delay, the court must guard itself against the danger of being led away by sympathy, and the appeal should be dismissed as time-barred, even at the risk of causing injustice and hardship to the appellant.'



11. In *First American Bank of Kenya Ltd vs. Gulab P Shah & 2 Others Nairobi (Milimani)* HCCC No. 2255 of 2000 [2002] 1 EA 65 the Court enunciated the principles to be considered in exercising the discretion whether or not to enlarge time and whether or not to grant such an application as follows:
  - (i) the explanation if any for the delay;
  - (ii) the merits of the contemplated action, whether the matter is an arguable one deserving a day in court or whether it is a frivolous one which would only result in the delay of the course of justice;
  - (iii) Whether or not the Respondent can adequately be compensated in costs for any prejudice that he may suffer as a result of a favourable exercise of discretion in favour of the applicant.
12. In this case, the reasons advanced by the applicant is that time ran out due to the demise of the initial Plaintiff/Applicant one George Otombo, who passed away on 21st August, 2024, prior to the delivery of the judgment, processing of the judgment, proceedings to the application to substitute the Deceased in the suit and obtaining advice from the Applicant's counsel to filing of the instant application. The applicant has presented proof in the form of a death certificate and letters requesting for proceedings. It is further stated they were not aware of the judgement notice which in my view makes sense since the death predated the judgement.
13. But of utmost importance the court further notes that certain protocols had to be adhered to such as the need for substitution of the deceased by the administrators of the estate which necessitated that grant be first obtained and thereafter leave of the court be sought. All these are time consuming. It is deponed that leave to substitute was granted on the 10th December 2024 and by 15th December, 2024 the applicant had applied for limited grant to pursue substitution. The limited grant was attached confirming the date of death and issue. Consequently, there was no inaction on the part of the applicant and which also would serve as a mitigation when considering whether there is inordinate delay.
14. Moreover, the Respondent did not file a replying affidavit hence, the factual averments by the applicants including service have not been controverted. The judgement shows the suit was undefended.
15. As regards the merits of the case, the Respondent has not taken issue with the same, hence I cannot base the decision to disallow the application thereon. In *Branco Arabe Espanol vs. Bank of Uganda* [1999] 2 EA 22 it was held that:

“The administration of justice should normally require that the substance of all disputes should be investigated and decided on their merits, and that errors, lapses should not necessarily debar a litigant from the pursuit of his rights and unless a lack of adherence to rules renders the appeal process difficult and inoperative, it would seem that the main purpose of litigation, namely the hearing and determination of disputes, should be fostered rather than hindered.”
16. Having considered the reasons advanced the upshot of the foregoing is that it is my view that the applicant has demonstrated sufficient reasons to warrant grant of the orders sought.
17. As to costs, the applicant shall bear his own costs of these proceedings.
18. The following orders shall issue to dispose of the application dated 16<sup>th</sup> December 2024



1. That time be and is hereby enlarged and leave granted to the Applicant/ Intended Appellant to file its Memorandum of Appeal out of time against the Judgement of Hon. B. LIMO delivered on 25th October, 2024 in Siaya ELC No. 47 of 2023.
2. That the Memorandum of Appeal annexed hereto be deemed as properly on record upon payment of the requisite fees within 14 days of the date of this ruling.
3. That the file shall be closed a new file shall be opened appropriately in tandem with (2) above.
4. That the applicant shall bear his own costs.

**DELIVERED AND DATED AT SIAYA THIS 25<sup>TH</sup> DAY OF SEPTEMBER 2025**

**HON. LADY JUSTICE A.E. DENA**

**JUDGE**

**25/09/2025**

Ruling delivered virtually through Microsoft teams Video Conferencing Platform in the presence of:

George Okello Owino Applicant

No appearance for the Defendants

No appearance for Interested Parties

Court Assistant: Ishmael Orwa

