

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KKAMEGA
SUCCESSION APPEAL NO. E032 OF 2025

AINEA OKWEMBA MUNALA-----
APPELLANT

AND

FESTUS OSUKA AMAKOBÉ (being sued as a representative of the estate of PAUL MUNALA AMAKOBÉ, alias PAUL MUNALA AMAKOBÉ(deceased)-----
RESPONDENT

(Being an appeal from the ruling /orders of Hon. V.O AMBOKO delivered on 11th June,2025, involving MCSUCC/E793/2023)

RULING.

1. The Appellant/Applicant filed a notice of motion application dated 5th September 2025 seeking the following orders;
 - a) *THAT this application be certified as urgent and the same be heard during the court vacation. (Spent)*
 - b) *THAT leave be granted to the applicant to file an Appeal against the decision of Hon. V.O. Amboko, Senior Resident Magistrate, delivered on 11th June 2025, out of time, and the memorandum of appeal attached herein be deemed to have been properly filed.*
 - c) *THAT this Honourable court be pleased to revoke the grant of representation issued to Festus Osuka Amakobe on 11TH June 2025, and or annul it.*
 - d) *THAT the pending hearing and determination of this application, the Respondent Festus Osuka Amakobe, his servants, agents and or any person acting on his behalf, be temporarily restrained from subdividing, selling, transferring, mortgaging or dealing in any*

manner whatsoever with land parcel No. W/Bunyore/Ebusiekwa/1123 or acting as a representative of the estate of Paul Munala Amakobe, alias Paul Munala Amakobe, subject to a grant dated 11th June, 2025

e) *THAT pending hearing and determination of this appeal herein the Respondent his agents, workers or any person acting on his behalf be restrained from selling subdividing, transferring, mortgaging or dealing any manner whatsoever with Land reference number W/BUNYORE/EBUSIEKWE/1123 of acting in any manner whatsoever as a representative of the estate of PAUL MUNALA AMAKOBÉ alias PAUL MUNALA AMAKOBÉ pursuant to a certificate of confirmation granted on 11th June 2025.*

2. In support of their application, the appellant filed a supporting affidavit where he avers that he is a beneficiary to the estate of the late Paul Munala Amakobe, who died on 28th August 1994 and that when the Hon. Magistrate delivered her ruling on 11th June 2025, confirming that the grant of the estate was to be issued to his uncle, the respondent.
3. He avers that the ruling was based on a mediation session which he was not party to, and later raised his grounds of objection and avers that his appeal to revoke the grant of confirmation of the grant has a great chance of success.
4. The appellant states that his late father died on 28th August 1998, as per the copy of the death certificate he had attached, a copy of the land certificate and a letter from the chief Emuhaya sub-county.

5. According to the appellant, the delay in filing the appeal was occasioned by the delay in typing and certifying the confirmation of the grant and that they are exposed to loss of the land, the only property of the estate, if this court fails to intervene.

ANALYSIS AND DETERMINATION.

6. The applicant herein applied to file leave out of time, among other issues, such as revocation and/or annulment of the grant.
7. The main question here is whether the applicant has demonstrated “*good and sufficient cause*” to justify the extension of time to appeal out of time under Section 79G of the Civil Procedure Act.
8. Section 79G of the Civil Procedure Act states that, “*Every appeal from a subordinate court to the High Court shall be filed within thirty days... 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. In *Leo Sila Mutiso v Rose Hellen Wangari Mwangi [1999] eKLR*, the Court of Appeal outlined the guiding principle for a good and sufficient cause as follows: the length of delay; the reason for the delay; possibly, the chances of the appeal succeeding; and the degree of prejudice to the respondent.
10. The Supreme Court in **Nicholas Kiptoo Arap Korir Salat v IEBC & 7 Others [2014] eKLR** stated that extension of time is not a right but a judicial discretion to be exercised judiciously, and should consider the following ingredients, the nature of the delay,

the explanation for the delay, the conduct of parties, public interest, the prejudice to be occasioned.

11. Article 48 ensures access to justice, and Article 50(1) guarantees a fair hearing. The Court of Appeal held in **Richard Nchapi Leiyagu v IEBC & 2 Others [2013] eKLR**: ***“The right to be heard is a valued right, and courts should be slow to shut out a litigant unless the circumstances justify such exclusion.”***

12. I note that the trial magistrate, Hon. V.O. Amboko, delivered her ruling on 11th June 2025, and the application to file out of time and the Memorandum of Appeal were filed on 5th September 2025, which is approximately 4 months later.

13. The applicant avers that the delay in filing was occasioned by the delay in typing and confirmation of the grant. This court finds that the explanation is sufficient, although I note that the applicant did not file any evidence to prove that he followed up with the court on the typed proceedings and confirmation of the grant. I will allow the explanation by the applicant.

14. **R v Kenya Revenue Authority Ex Parte Stanley Mombo [2018] eKLR**, it was held that where a delay in obtaining certified proceedings was accepted as a ***“sufficient cause.”***

15. On whether the Intended Appeal is Arguable at this stage, the court need not examine the merits in detail. The test is whether the appeal raises triable or arguable points, as stated in:

16. **Stanley Kang'ethe Kinyanjui v Tony Ketter & 5 Others**

[2013] eKLR An arguable appeal must not succeed but one raising a legitimate point worthy of consideration.

17. The intended appeal by the applicant concerns the right of a beneficiary to participate in representation proceedings, whether the mediation process was legally binding, and whether the magistrate properly exercised discretion under the Law of Succession Act.

18. The issues that the applicant raised go to the core of succession on administration of the deceased estate and thus cannot be trivialized; hence, I find that the applicant has satisfied this ingredient

19. The respondent will not suffer prejudice that cannot be compensated in costs. This is especially so because granting leave does not determine the substantive appeal.

20. On the other hand, refusal would irreparably harm the applicant, deny him his statutory right of appeal, and potentially lock him out from participating in the administration of his father's estate.

21. Considering the compelling explanation, the arguable issues raised, I am persuaded that the applicant has demonstrated good and sufficient cause to grant leave to appeal out of time.

22. The Notice of Motion dated 2 July 2025 succeeds only on the prayer for extension of time.

23. The court therefore makes the following orders:

- a. Leave is hereby granted to the applicant to file an appeal out of time against the ruling delivered on 11th June 2025 by Hon. V.O. Amboko (SRM) in MCSUCC/E793/2023.
- b. The Memorandum of Appeal annexed to the application should be filed and served within seven (7) days from the date of this ruling.
- c. All other prayers in the application specifically concerning revocation of grant or property preservation are deferred, and may be canvassed in the appeal
- d. Costs of this application shall abide by the outcome of the intended appeal.
- e. Mention 19.3.2024 for direction on the main Appeal.
- f. Right of Appeal 30 days.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA
THIS 26th DAY OF NOVEMBER, 2025.**

S.MBUNGI

JUDGE

In the presence of:-

CA: Angong'a

Parties absent though aware of the ruling date.