

**IN THE COURT OF  
APPEAL AT KISUMU**

**(CORAM: KIMARU, JA (IN-  
CHAMBERS) CIVIL APPLICATION NO.  
E113 OF 2025 BETWEEN**

**LUCY WAMBUI ABOGE.....APPLICANT  
AND  
ORPHA ADONGO ABOGE.....1<sup>ST</sup>  
RESPONDENT  
BETREACE WAMUYU ABOGE.....2<sup>ND</sup>  
RESPONDENT  
GEORGE ABICH OWALO.....3<sup>RD</sup>  
RESPONDENT**

(Being an application for extension of time to appeal from the Judgment of the High Court of Kenya at Migori (R. Wendoh, J) Dated 20<sup>th</sup> October, 2023

**in**

**HCC Succ. Cause No. 405 of 2024)**

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**RULING**

1. The appeal that is intended to be filed by the applicant arises from the Judgment rendered by the High Court sitting at Migori (Wendoh R. J) on 20<sup>th</sup> October, 2023 in a Succession dispute. Pursuant to **Rule 50(1)** of the **Law of Succession Act**, the applicant sought leave from the High Court to file the appeal to this Court. In a Ruling delivered on 31<sup>st</sup> October, 2025, the High Court (Ong'injo, J) declined to grant

leave. Undeterred, applicant moved to this Court seeking leave to be allowed to lodge the appeal to this Court. In a Ruling delivered on 11<sup>th</sup> July,

2025, this Court (P. Nyamweya, JA) allowed the application.

In its Ruling, this Court stated that:

***“15. I am therefore persuaded that sufficient cause for the delay in filing the application for leave has been demonstrated and that the delay was not inordinate in the circumstances. I am also of the view that the respondent will not be unduly prejudiced as they still have opportunity to raise the issues they have raised during the hearing of the substantive application for leave to appeal.*”**

***16. Consequently, the application dated 8<sup>th</sup> April, 2025 is found to be merited, and the applicant is accordingly granted leave to file an application for leave to appeal out of time, within fourteen (14) days of the date of delivery of this ruling. As this is a family related dispute, there shall be no order as to the costs of the application.”***

2. It was on the basis of the leave that was granted by this Court, that the applicant filed the present application on 22<sup>nd</sup> July 2025 essentially under **Rule 4** of the **Court of Appeal Rules** seeking to be granted leave to appeal out of time against the Judgment of the High Court rendered on 20<sup>th</sup> October, 2023. The application is supported by the grounds stated on the face of the application and the annexed affidavit of the applicant. The applicant attributes the delay in lodging the appeal in time to the time it took her to obtain

the leave from the court to file

the appeal before this Court. The applicant gave the litigation

history that prevented her from lodging the appeal in time. She is emphatic that her appeal raises weighty grounds that are likely to succeed on appeal. She urged the Court to allow the application, as in her view, the respondents will not suffer any prejudice.

3. The application is unopposed. The respondents filed no replying affidavit in opposition to the application. Neither did they file written submission despite being served by the Court.

4. This Court has considered the applicant's application, the submissions and the bundle of authorities relied on. The applicant appreciates the principles that guide this Court in determining application such as the present one; she must explain the reasons for delay. The length of delay is material just as is whether they have an appeal that will likely to succeed and whether the respondents will be prejudiced. (See **Andrew Kiplagat Chemasingo v. Paul Kipkorir Kibet [2018] eKLR**).

5. In the present application, it was clear to the Court that the applicant was prevented from lodging the appeal in time due to the time it took her to pursue the leave to appeal to this

Court as per the requirement of the **Law of Succession Act**. This Court is satisfied with the explanation given by the applicant. It

took the applicant a period of nearly two years before she was finally able to obtain leave from this Court. The applicant has persuaded this Court of her desire to appeal to this Court especially in light of the proposed grounds of appeal that she has alluded to in the affidavit in support of the application. She should be given a chance to ventilate her appeal before this Court.

6. In the premises therefore, the application has merit and is hereby allowed. The applicant is granted leave to appeal out of time. The notice of appeal shall be filed and served within **fourteen (14) days**. The record of appeal shall be filed and served within **forty-five (45) days** of today's date. There shall be no orders as to costs.

**Dated and delivered at Kisumu this 1<sup>st</sup> day of December, 2025.**

**L. KIMARU**

.....  
**. JUDGE OF  
APPEAL**

**I certify that this is  
a true copy of  
original.**

***Signed***

**DEPUTY REGISTRAR.**