



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ochido v Awino (Civil Application E100 of 2022)  
[2023] KECA 37 (KLR) (3 February 2023) (Ruling)**

Neutral citation: [2023] KECA 37 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CIVIL APPLICATION E100 OF 2022  
F TUIYOTT, JA  
FEBRUARY 3, 2023**

**BETWEEN**

**KILLION N OCHIDO ..... APPLICANT**

**AND**

**LUCCIA OWALLA AWINO ..... RESPONDENT**

*(Being an application for extension of time to file notice of appeal out of time from the judgment of the High Court of Kisumu (Ombwayo, J) delivered on 18th May 2022 Kisumu ELC Misc. No. 24 of 2016)*

**RULING**

1. Before me is a Notice of Motion dated 25<sup>th</sup> July, 2022 said to be pursuant to rules 4 and 5(2)(b) of the *Court of Appeal Rules*, 2010 and in which the applicants seek the leave of this Court to file a notice of appeal and intended appeal out of time against the decision of Ombwayo, J. delivered on 18<sup>th</sup> May, 2021 in Kisumu ELC Misc. No. 24 of 2016. Rule 5(2)(b) is however wrongly cited as it is in respect of stay.
2. In support of the application is an affidavit sworn by the applicant on even date. His case is that he was acting in person before the superior court wherein at the close of pleadings and submissions having been filed, judgment was reserved for 18<sup>th</sup> May, 2021. On the said date, he attended court and contends that he was not informed that the decision would be delivered online on the very day. He was therefore not aware that judgment was delivered and on 14<sup>th</sup> September, 2021, he wrote a letter to the Deputy Registrar following up on the matter. He also sought the services of an advocate to assist with the process. He deposes that it was only on 21<sup>st</sup> September, 2021 that he became aware that the said judgment had been delivered early. His appointed advocates then moved to file a notice of appointment of advocates and obtained certified copies of the proceedings and judgment. He further deposes that he fell ill and was unable to communicate with his advocate delaying instructions on filing an appeal.



He contends that the delay in filing an appeal was caused by his lack of knowledge of court processes as he was acting in person.

3. The respondent has not put any response to the application.
4. The applicant filed submissions to the application rehashing the contents of his affidavit.
5. Rule 4 reads;
  4. The Court may, on such terms as it thinks just, by order extend the time limited by these Rules, Extension by any decision of the Court or of a superior court, for the doing of any act authorized or of time required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.
6. The unfettered discretion granted to this Court under Rule 4 is guided by well settled considerations restated in *Fakir Mohamed v Joseph Mugambi & 2 others* [2005] eKLR) to be, inter alia:-

“The period of delay, the reason for the delay, (possibly) the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted, the effect of delay on public administration, the importance of compliance with time limits, the resources of the parties, whether the matter raises issues of public importance-are all relevant but not exhaustive factors...”
7. The substantial reason given by the applicant for the delay in filing the appeal was due to his limited knowledge of court processes. He deposes that he was not familiar with the process of judgments being delivered electronically by email and the court officials did not advise him to provide his email address for that purpose. Further that he did not receive any communication from the court forcing him to write a letter to the deputy registrar on 14<sup>th</sup> September, 2021 and only become aware of the judgment on 21<sup>st</sup> September 2021. He further deposes that he delayed in filing an appeal as he fell sick. In his submissions, he contends that though not pleaded, the covid 19 pandemic also contributed to the delay.
8. The judgment sought to be appealed against was delivered electronically via email on 18<sup>th</sup> May, 2021 which date the applicant was well aware of. This mode of delivery of judgments was a new phenomenon and the applicant, a lay litigant, may be pardoned for failing to receive a copy of the judgment upon its delivery. Yet, it took him up to 14<sup>th</sup> September, 2021, almost four
  - (4) months, to follow up on the judgment. This period of delay has not been well explained. The inaction there after is worse still. He came to know of the judgment on 21<sup>st</sup> September, 2021 and took steps to instruct an advocate to pursue an appeal on his behalf. The advocate took the necessary step of obtaining certified copies of the proceedings and judgment but did not nothing more as the applicant did not give further instructions regarding the intended appeal. He attributes his inaction to illness at the time and the covid 19 pandemic. The success of the application before me turns on this Court accepting that explanation but how is it to do so when there is no iota of proof of the illness or demonstration that the covid 19 pandemic prevented the applicant from giving timely instructions. The present application dated 25<sup>th</sup> July, 2022, is brought two hundred and eighty-two  

(282) days (giving regard to the exclusion of the Christmas recess) from the date the applicant admits knowledge of the judgment and is certainly inordinate.
9. The application dated 25<sup>th</sup> July, 2022 is without merit and must suffer the fate of failure. It is dismissed but with no order as costs as the respondent did not respond to it.



DATED AND DELIVERED AT KISUMU THIS 3<sup>RD</sup> DAY OF FEBRUARY, 2023.

F. TUIYOTT

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JUDGE OF APPEAL

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

SIGNED

**DEPUTY REGISTRAR.**

