



REPUBLIC OF KENYA



KENYA LAW

THE NATIONAL COUNCIL FOR LAW REPORTING

Where Legal Information is Public Knowledge

**Mulama & another v Viraghi (Civil Application E130 of 2022)
[2023] KECA 729 (KLR) (9 June 2023) (Ruling)**

Neutral citation: [2023] KECA 729 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION E130 OF 2022**

F TUIYOTT, JA

JUNE 9, 2023

BETWEEN

AGNETA GAZEMBA MULAMA 1ST APPLICANT

GEORGE HAVI MULAMA 2ND APPLICANT

AND

STEPHEN SARAMBA VIRAGHI RESPONDENT

*(Being an Application for extension of time to file an appeal out of time
from the Ruling of the High Court of Kenya at Kakamega (N.A. Matheka,
J) on 26th September, 2019 in Kakamega ELC Case No. 318 of 2017)*

RULING

1. Agneta Gazemba Mulama and George Havi Mulama (the Applicants) move this Court under a host of statutory provisions including Rule 4 of the Rules of this Court for extension of time to file and lodge an appeal out of time against the Ruling of Matheka, J dated 26th September, 2019 in Kakamega ELC No. 318 of 2017 Stephen Saramba Viraghi vs. Hilary Savari & 3 others. The application is dated 31st October, 2022.
2. As is clear even from the face of the application, it is brought over 36 months after the date of the decision. How is this long delay explained? The 1st applicant swore an affidavit on 31st October, 2022 in which she avers that their advocate Mr. Musiega never notified of them of delivery of the Ruling on 26th September 2019. Further that her effort to get counsel to give reasons and even to get her file have been fruitless. She pleads that she is a desperate Kenyan and pleads to this Court to give her a chance to appeal against the said decision.
3. This explanation is in stark contrast to the reason given on the face of the application which is that the 1st applicant has been unwell due to her advanced age occasioning a communication breakdown



between her and her advocate and for that reason could not instruct her advocate in time. This inconsistent explanation by itself renders the reason for the long delay of 36 months unreasonable and unacceptable.

4. That alone is sufficient to dispose of the application before me. The application dated 31st October, 2022 is dismissed with costs.

DATED AND DELIVERED AT KISUMU THIS 9TH DAY OF JUNE, 2023.

F. TUIYOTT

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR.

