



**Nyamira Luxury v Gekoyo (Civil Application 126 of 2021)
[2022] KECA 483 (KLR) (25 March 2022) (Ruling)**

Neutral citation: [2022] KECA 483 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION 126 OF 2021
F TUIYOTT, JA
MARCH 25, 2022**

BETWEEN

NYAMIRA LUXURY APPLICANT

AND

DANIEL HANGAI GEKOYO RESPONDENT

(Being an application for leave to file an intended appeal out of time against the judgment (Hon. Maina, J) dated 29th July, 2021 in Nyamira Civil Appeal No. E 013 of 2021)

RULING

- [1] Aggrieved by the judgment of Maina, J delivered on 2nd July, 2021, and intending to appeal against it, the applicant ought to have filed a notice of appeal by 12th August, 2021, but is late. In an application dated 23rd August, 2021 and expressed to be brought under Rules 4, 5(2)(b) and 29 of the [Court of Appeal Rules](#), the applicant seeks leave to file an intended appeal out of time.
- [2] The reason given for the lateness is that, although the judgment was delivered on 2nd July, 2021, it was not until 18th August, 2021 that the applicant was able to get a copy of it. This was six (6) or so days after the statutory deadline for filing of the notice of appeal. Five (5) days later, the applicant filed the motion now before Court.
- [3] The motion is not opposed.
- [4] The applicant acted promptly to remedy the situation and I will excuse the delay as it is not inordinate. Secondly, as the respondent did not respond to the application, then there is no evidence of any prejudice that may be occasioned on him if the application is granted. Length of delay, reason for delay, such prejudice and, possibly, the chances of success of the intended appeal are some of the factors that a single judge sitting over an application of this nature must consider in determining whether



or not discretion to extend time should be exercised in favour of an applicant (see for example *Fakir Mohammed vs Joseph Mugambi & 2 others* [2005] eKLR).

- [5] The motion of 23rd August, 2021 is hereby allowed. The applicant is granted fourteen (14) days to file and serve a notice of appeal and to thereafter file and serve a record of appeal within sixty (60) days. Costs of the application shall be in the appeal.

DATED AND DELIVERED AT KISUMU THIS 25TH DAY OF MARCH, 2022.

F. TUIYOTT

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JUDGE OF APPEAL

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

Signed.

DEPUTY REGISTRAR

