



**Oburon (Being the Administratrix of the Estate of Obarasa Matiengi) v Omuse  
(Civil Application E032 of 2020) [2022] KECA 866 (KLR) (22 July 2022) (Ruling)**

Neutral citation: [2022] KECA 866 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CIVIL APPLICATION E032 OF 2020  
F TUIYOTT, JA  
JULY 22, 2022**

**BETWEEN**

**SIFROSA AKUMU OBUROK ..... APPLICANT  
BEING THE ADMINISTRATRIX OF THE ESTATE OF OBARASA MATIENGI**

**AND**

**JOHN OMUSE ..... RESPONDENT**

*(Being an application for extension of time limited for the filing of the Applicant's  
Notice of Appeal arising from the judgment & decree (A. Omollo, J) on 2nd  
December, 2021 in Busia Environment & Land Court Case No. 48 of 2019)*

**RULING**

1. Sirifosa Akumu Oburon (the applicant) is aggrieved by the decision of Hon. Omollo, J delivered on 2<sup>nd</sup> December, 2021 in Environment & Land Court Case No. 48 of 2019 and desirous of appealing against it, ought to have filed a Notice of Appeal by 17<sup>th</sup> December, 2020 but was late.
2. Now, through an application dated 22<sup>nd</sup> February, 2022 brought under the provisions of Rule 4 of the Rules of this Court, the applicant seeks leave of the Court to file a Notice of Appeal out of time. The applicant explains that the intended appeal was not filed on time due to a misunderstanding between her and her previous advocates, M/S Calistus & Company Advocates.
3. There is no response to the application.
4. In considering an application of this nature, this Court is enjoined to give heed to the settled principles restated in *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* – Civil Application No. Nai 251 of 1997;

“It is now settled that the decision whether to extend the time for appealing is essentially discretionary. It is also well stated that in general the matters which this court takes into



account in deciding whether to grant an extension of time are, first the length of the delay, secondly the reasons for the delay, thirdly (possibly) the chances of the appeal succeeding if the application is granted and fourthly the degree of prejudice to the respondent if the application is granted.”

5. Although the reason given for lateness may on another occasion not be accepted as plausible, I note that the application was brought about forty- three (43) (excluding the Christmas vacation) days after the deadline for filing the Notice of Appeal. This is not an inordinate delay. In addition, the Court is not told that the respondent will suffer any prejudice if time is enlarged.
6. I exercise of my discretion in favour of the application of 22<sup>nd</sup> February, 2022 and allow it. Costs shall be in the appeal. The applicant to file and a serve Notice of Appeal within fourteen (14) days hereof and thereafter, and within sixty (60) days of today, institute and serve the appeal.

**DATED AND DELIVERED AT KISUMU THIS 22<sup>ND</sup> DAY OF JULY, 2022.**

**F. TUIYOTT**

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**JUDGE OF APPEAL**

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

*Signed*

Deputy Registrar

