



REPUBLIC OF KENYA



**Aboyi v Laban & another (Civil Application E35 of 2020)
[2021] KECA 75 (KLR) (8 October 2021) (Ruling)**

Neutral citation: [2021] KECA 75 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION E35 OF 2020
JW LESSIT, JA
OCTOBER 8, 2021**

BETWEEN

JOSHUA ALUMASI ABOYI APPLICANT

AND

ALFRED IVUSA LABAN 1ST RESPONDENT

SAVALA SECONDARY SCHOOL 2ND RESPONDENT

(An Application for extension of time to file Notice of Appeal out of time in an intended appeal against a ruling of the High Court in Kakamega (N.A. MATHEKA, J.) dated 10th October 2017)

RULING

1. Even though this application seeks extension of time to file a Notice of Appeal before this court, it has been brought under the wrong provisions of the law. It invokes Sections 3 & 3A of the *Civil Procedure Act* and Order 42 Rule 6 and Order 51 Rule 1 of the *Civil Procedure Rules*. The application was filed on 28th February, 2020, challenging the decision of the ELC Court delivered on the 10th October, 2017. This was 789 days after the date due for the filing of the said notice.
2. The reasons advanced why the notice of appeal was not filed in time are that the Applicant went to the wrong courts to challenge the impugned decision, and that he only realized when time had lapsed that he should have approached this court. The Applicant explained that he has been pursuing stay in different courts and had prepared all the documents for filing within the requisite time. He urges that the delay was not deliberate but out of unforeseen mistake.
3. Having considered the reasons advanced for the delay in bringing this application, I am not satisfied that the delay is adequately explained. The application has been made 789 days out of time. I find this a long and inordinate delay to bring the application by any standards.



4. In addition, the application has been brought under the wrong provisions of the law, and does not invoke the jurisdiction of this court.
5. Having considered the above factors, I find that for the reasons I have given above, the most appropriate order to make is to strike out the application with no order as to costs.

Orders accordingly.

DATED & DELIVERED AT NAIROBI THIS 8TH DAY OF OCTOBER, 2021

J. LESIIT

.....

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

