



REPUBLIC OF KENYA



KENYA LAW
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**Muchai v Mwanja (Civil Appeal 124 of 2021)
[2021] KECA 347 (KLR) (17 December 2021) (Ruling)**

Neutral citation: [2021] KECA 347 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT ELDORET
CIVIL APPEAL 124 OF 2021
A MBOGHOLI-MSAGHA, JA
DECEMBER 17, 2021**

BETWEEN

PHILIP MUCHAI APPELLANT

AND

FREDERICK WEKESA MWANJA RESPONDENT

(An application for extension of time to file notice and record of appeal out of time in an intended appeal against a judgment of High Court at Bungoma (Riech J) dated 3rd February, 2021 in Bungoma HCC Succession Cause No. 45 of 1998)

RULING

1. The applicant by way of Notice of Motion seeks orders that he be granted leave to lodge and serve the memorandum of appeal and record of appeal out of time. He has cited Sections 3 (A) and 3(B) of the [Appellate Jurisdiction Act](#) and Rules 4, 75,82,83 and 86 of the [Court of Appeal Rules](#).
2. The application is supported by an affidavit sworn by the applicant in which he explains that the judgment he seeks to appeal was delivered on 3rd February, 2021 and soon after he filed a Notice of Appeal on 10th February, 2021. He then applied for proceedings from the trial court, which however were availed after the 60 days within which to file the record of appeal had expired.
3. He states he has an arguable appeal and no prejudice shall be occasioned to the respondent. The application is opposed by the respondent the contents of which I have noted.
4. I have looked at the record presented and noted that the proceedings were certified on 6th July, 2021 and availed to the applicant on 10th August, 2021. This application was filed on 28th August, 2021 which was 13 days after the proceedings were availed. It is clear that the delay was occasioned by the late availability of the proceedings of the trial court. I have noted what the respondent has said that the proceedings were all along available, but that contention has been dislodged by the certification on 6th July, 2021 aforesaid.



5. I have looked at the draft memorandum of appeal and I am persuaded that there is an arguable appeal relating to the revocation of letters of administration. The filing of the notice of appeal soon after the judgment of the trial court was a clear demonstration by the applicant to exercise his right of appeal.
6. No prejudice has been demonstrated shall befall the respondent and therefore, this application is allowed on condition that the memorandum of appeal and the record of appeal shall be filed within 60 days from the date of this ruling. The costs shall abide by the outcome of the appeal.

DATED AND DELIVERED AT NAIROBI THIS 17TH DAY OF DECEMBER, 2021

A. MBOGHOLI MSAGHA

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR

