



REPUBLIC OF KENYA



KENYA LAW
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**Transmara Sugar Company Limited v Omolo (Civil Application
E122 of 2021) [2021] KECA 358 (KLR) (17 December 2021) (Ruling)**

Neutral citation: [2021] KECA 358 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION E122 OF 2021
A MBOGHOLI-MSAGHA, JA
DECEMBER 17, 2021**

BETWEEN

TRANSMARA SUGAR COMPANY LIMITED APPELLANT

AND

JOSEPH AMOLO OMOLO RESPONDENT

*(In the matter of an application for extension of time to file and
serve notice of appeal and appeal out of time from the Judgment of
(Mrima J)in Migori HCCA NO. 85 of 2019 delivered on 9th June, 2021)*

RULING

1. The applicant has moved the court under Sections 3(A) and 3(B) of the *Appellate Jurisdiction Act* and Rule 4 of the *Court of Appeal Rules* for orders that time to file the notice of appeal and record of appeal be extended. The application is supported by an affidavit sworn by Emmanuel Seriani the applicant's Legal Officer.
2. According to the applicant the judgement of the Superior Court was delivered on 9th June, 2021 and soon after the applicant applied for proceedings which were ready on 13th August, 2021 at which date the time to file the record of appeal had expired. It would be noted that the delay was about 5 days after the last day within which to file the record of appeal. This application was filed on 28th August, 2021 which was seven days after receipt of the proceedings.
3. I have looked at the record. The delay cannot be said to be inordinate and in any case reasons for the delay have been provided. The applicant has demonstrated in line with the case of *Leo Sila Mutiso v Rose Hellen Wangari Mwangi – Civil Application No. Nai 251 Of 1997*. I am also persuaded, going by the record, that no prejudice shall be occasioned to the respondent.



4. Accordingly, this application is allowed. The applicant shall file and serve the notice of appeal within seven days (7) followed by the filing of the record of appeal within sixty (60) from the date the notice is filed. 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

Signed

DEPUTY REGISTRAR

