



REPUBLIC OF KENYA



**Muhia & 2 others v Nganga (Miscellaneous Cause 042 of 2022)
[2024] KEHC 10062 (KLR) (26 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 10062 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS CAUSE 042 OF 2022**

A MSHILA, J

JULY 26, 2024

BETWEEN

SAMUEL MUHIA 1ST APPLICANT

MARY WAMBUI 2ND APPLICANT

VIRGINIA WANJIKU MWANGI 3RD APPLICANT

AND

MICHAEL GATURU NGANGA RESPONDENT

RULING

1. Before the court for determination is the Notice of Motion Application dated 4/03/2022, brought under sections 3A, 79G and 95 of the *Civil Procedure Acts*. The application seeks extension of time to file an appeal arising from the Ruling dated 24/12/2018 delivered by the Hon. E.N. Nyongesa CM, Gatundu.
2. The application is premised on the grounds that since judgment was delivered in Gatundu CMCC Succession Cause No. 189 of 2017 on 24th December, 2017, the Applicants were verily informed by the firm of Wangui Kuria & Co. Advocates that an appeal had been filed but later discovered that the firm had failed, neglected and/or ignored to file the appeal; that the Applicants changed Advocates and instructed the firm Mwaura Marai & Co Advocates to file and prosecute the Appeal; By this time the period within which to file the appeal had already lapsed.
3. The application is supported by the affidavit of Mary Wambui filed on 10th March, 2022, in which she reiterates the grounds of the application and states they are aggrieved by the trial court's judgment and wish to appeal and that it is in the interest of justice that the order be granted.
4. The application was opposed by the Respondent who relied on his Replying Affidavit, a Preliminary Objection and written submissions on the grounds of inordinate delay; the Ruling was delivered by



Hon. E. Nyongesa SRM Gatundu on 24th December, 2018 and thereafter an application for review was filed by the Applicants and a Ruling delivered on 2nd October, 2020 by Hon. H.M. Nganga PM Gatundu confirmed the Ruling of 24th December, 2018.

5. The parties were directed to canvass the application by way of filing and exchanging written submissions.

Issues For Determination

6. Having read the application and heard the submissions made this court has framed only one issue for determination which is whether this court should extend time to file the appeal;

Analysis

7. The applicable law is found at Section 79G of the [Civil Procedure Act](#) which provides as follows: -
79G. Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order.
Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.
8. In the current application the Applicants have attached a copy of the Memorandum of Appeal. The reason given for the late filing is the failure of the previous counsel to act as instructed after the delivery of the Ruling dated 24/12/2018.
9. The Ruling was delivered on 24/12/2018 by Hon. Nyongesa while the current application was filed on 4th March 2022, a period of 4 years since the delivery of the judgment. The delay for such a period of time can only be deemed to be inordinate.
10. Despite the Applicants having given reasons as the failure of the then counsel to act as instructed, this courts considered view is that each litigant is responsible to follow their own case and ensure they keep tabs of the progress of their matter, the Applicants cannot fault their then counsel for non-communication and/or non-action. The Applicants were under the duty to ensure she was well instructed of their matter.
11. However, the decision on whether to enlarge time to file an appeal is a discretion of the court. The Applicants must satisfy the court that the delay was reasonable and justified and that the Respondent will not suffer any prejudice.
12. What amounts to unreasonable delay depends on each circumstance of the case. In the case of [Jaber Mohsen Ali And Another v Priscillah Boit And Another](#) E And L No 200 Of 2012 (2014) eKLR the court held that:-

“The question that arises is whether the application has been filed after unreasonable delay. What is unreasonable delay is dependent on the surrounding circumstances of each case. Even one day after judgment could be unreasonable delay depending on the judgment of the court and any order given thereafter. In the case of *Christopher Kendagor* ELC 919 of 2012 the applicant had been given 14 days to vacate the suit land. He filed an application one day after the 14 days. The application was denied, the court holding that the application ought to have come before expiry of the period given to vacate”.



13. In the instant case the issue in dispute in the trial court involves distribution of the estate of the deceased, the properties of the estate may have devolved to the beneficiaries as per the Ruling. The Applicants being dissatisfied with the Ruling are found to have been indolent in exercising their right of appeal.
14. The application was strongly opposed and this court is not satisfied with the reasons advanced for the delay in not filing the appeal in good time. This court will not aid an indolent in litigating their matters.

Findings and Determination

15. For the forgoing reasons this court makes the following findings and determinations;
 - i. In the circumstances thereof, this Court finds the application dated 4/03/2022 to be lacking in merit and the same is hereby dismissed;
 - ii. This being a family matter each party to bear their own costs.

Orders Accordingly.

DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 26TH DAY OF JULY, 2024.

A. MSHILA

JUDGE

In the presence of:-

Mourice - Court Assistant

Kiarie – h/b for Ndungu Mwaura – Respt

N/A- for the Applicant

