



REPUBLIC OF KENYA



KENYA LAW
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In re Esttae of Cecilia Wangui Nganga (Deceased) (Miscellaneous Cause E005 of 2024) [2024] KEHC 16299 (KLR) (Family) (20 December 2024) (Ruling)

Neutral citation: [2024] KEHC 16299 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
FAMILY
MISCELLANEOUS CAUSE E005 OF 2024
CM KARIUKI, J
DECEMBER 20, 2024**

IN THE ESTATE OF CECILIA WANGUI NGANGA (DECEASED)

BETWEEN

ROSEMARY WAMBUI MUTHEE APPLICANT

AND

NANCY NYARUAI NDIRITU RESPONDENT

RULING

1. By application dated 6/5/2024 and supporting affidavit sworn on even date the application seek prayers for:
 - i. Spent
 - ii. Spent
 - iii. That pending the hearing and determination of the applicant's appeal to the High Court against the ruling delivered on 16/10/2024, there be stay of execution of the said judgment NYahururu Chief Magistrate's Court Succession Case No. 223 of 2017.
 - iv. That this Honorable Court be pleased to extend the time for filing and service of the Memorandum of Appeal annexed herein.
 - v. That the costs of this application be provided for.
2. It is based on the ground on the face of the application namely.



3. That the applicant herein had filed in Nyahururu Chief Magistrate's Court Succession Cause No. 223 of 2017, Summons for Revocation and/or Annulment of Certificate of Confirmation of Grant confirmed on 7/4/2022.
4. That a ruling was delivered on 16/10/2024 in Nyahururu Chief Magistrate's Court Succession Cause No. 223 of 2017 by Hon. C. Muhoro (SRM) dismissing applicant's application, thus, disinherited the applicant off her inheritance in the estate of her later mother Cecilia Wangui Ng'ang'a (Deceased). Being aggrieved by the whole decision, requested for a copy of the said ruling on 26/10/2024 being desirous of appealing the same.
5. That the registry officials communicated severalty to the Applicant's Advocates that the typed copy of judgment was not ready for collection yet therefore the inordinate delay was occasioned by the court officials who deferred typing of the said judgment for several months.
6. That the Applicant's Advocates were only able to get a copy of the Judgment on 22nd February, 2024 after the time within which to file an appeal had already lapsed. The time within which to file the said appeal has lapsed and the same was not occasioned voluntarily. The Applicant's Advocates implored severally on the applicant to visit their offices to furnish her advocates with further instructions on how to proceed hencef but were unfortunately not able to reach her due to network issues in her home area making the numerous phone calls unsuccessful.
7. That the applicant therefore could not be able to supply sufficient instructions to his Advocates to file the intended appeal against the decision of 16/10/2024.
8. The applicant contends that she has an arguable and tri-able appeal and therefore this Honorable Court should be inclined to order for stay of execution pending hearing and determination of her intended appeal.
9. Same are reiterated in the supporting affidavit sworn on 6/5/2024 by Rosemary Wambui Muthee. The respondent affidavit on reply to application is not on record. The Appellant has however filed supplementary affidavit alluding to a replying affidavit sworn 30/5/2024 in supplementary affidavit the applicant's respondents as follows:
10. That the delay in obtaining the ruling of 16/10/2023 cannot be faulted on her as the said impediment is solely on the part of the court registry officials who could not find the court file months after request of 26/10/2023. The Hon Court should be inclined to excuse the default as her advocates filed the application as soon as they became aware of the need to do so, without any further delays, immediately after she had instructed them to file an appeal against the said ruling.
11. That she is pleading for this court's indulgence in granting leave to file my appeal out of time as the delay was inexcusable, unforeseeable and beyond the control of neither my advocates nor me. that granting leave to extend time to file appeal being discretionary, a deserving party as the degree of lateness is not fatal and the explanation thereof is that there was a delay in obtaining a copy of the ruling and the inadvertence occasioned when her advocates couldn't reach her for a while because of unforeseen network issues with her then faulty mobile phone.
12. That her advocates did not immediately prepare a memorandum of appeal after the delivery of the ruling as alleged by the Respondent for the basic reason that, they needed to properly probe the determination and the rationale of the trial court in order to requisitely draft arguable and substantive grounds of appeal and that would not have been possible until they got a hold of a physical copy of the said ruling, which explanation holds water.



13. The confirmed grant of 7/4/2022 was upheld by the trial court despite the overwhelming evidence tendered by her that the same was obtained fraudulently by the making of a false statement the impugned mode of distribution of the estate of Cecilia Wangui Ng' ang'a (Deceased).
14. The consent she signed was done out of undue influence with a purported promise of an outcome to the effect that she was to inherit from her late mother's estate but the same was to effect consent to her wrongful disinheritance and the same was blatantly ignored and/ or neglected by the trial court.
15. She is aggrieved by the mode of distribution and the subsequent confirmation process of the grant of 7/4/2022 (given the proceedings were conducted in Swahili which language she did not understand) and she is advised by her advocates on record that the decision of the trial court that the same cannot be remedied by the provisions as encapsulated by section 76 of the *Law of Succession Act* but by an appeal or review is a far-reaching misdirection of the law.
16. That the purported handwritten will dated 14/11/2016 which was allegedly drafted by her mother was only adduced during the hearing of the instant summons for revocation yet the probate and administration proceedings as filed by the Respondent were filed under intestacy insinuating that the deceased left no valid written nor oral will.

17. Respondent Case

18. The Respondent opposes application and via a Replying affidavit states as follows: The application has not met the well settled principles of granting the prayers sought, and as such it is an abuse of the court process and he prays for it to be dismissed with costs. The impugned ruling was delivered on 16th October 2023, whereas the current application was filed on 13th May 2024, which is a delay for seven months.
19. The typed copy of the ruling read on 16th October 2023 was readily available on 17th October 2023, and there is no reason advanced by the applicant as to why her Advocate applied for a copy of the ruling on 30th October 2023. THAT no plausible reason has been advanced by the applicant for the undue delay in taking action after the delivery of the ruling, and as such it is evident that the applicant's application is an afterthought.
20. That the applicant has not demonstrated the efforts she and her Advocate took to follow up on a copy of the ruling from 30th October 2023 to 22nd February. THAT the applicant's current Advocate was the same one who represented her during the lower court proceedings, and he was present when the ruling was delivered, and as such he heard the terms of the ruling, and was thus in a position to prepare memorandum of appeal.
21. That it is evident that after the ruling of 16th October 2023, the applicant lost interest in the matter as she did not make a follow up with her Advocates in order to give instructions on the filing of the appeal.
22. That the deceased herein is his mother and the applicant is his sister, and his father was one Daniel Muthee Wahome (deceased) whose estate comprised of L. R Laikipia/ Ol Arabel / 178, and which was distributed by the court and each of his children, the applicant included were given their rightful share.
23. That during her lifetime, the deceased herein had expressed her wish on how she would want her parcel of land L.R Nyandarua/ Aberdare Forest North Block 1/ 56 distributed, after taking into account that all her children had benefited from the estate of their father.
24. The deceased intended the said parcel of land to be shared by Daniel Nderitu Nyaruai And James Ngugi Muthee in the ratio of 0.889 hectares and 0.281 hectares, respectively.



25. That the applicant has her rightful share of her parents of 6.172 acres in L. R Laikipia/ Ol Arabel / 178, and as such, she should be contended with it and respect the deceased's aforesaid wish on the mode of distribution of L. R Nyandarua/ Aberdare Forest North Block 1/ 56.
26. That trial court considered the facts of the matter, evidence produced in court, and the provision of the law while coming up with the decision, and thus, the said decision is well founded, and the intended appeal has no chance of success.
27. That the applicant has not demonstrated the irreparable loss that she is likely to suffer if this application is not allowed, and moreso taking into account the fact that she already has her rightful share of her parcel of land, contrary to her allegation that she will be rendered landless.
28. 16. THAT the conduct of the Appellant in this application amounts to misusing the court's process to delay the distribution of the deceased estate to the rightful beneficiaries.
29. That the applicant has not proved any of the well-settled principles to warrant the issue of the prayer for an extension of time to file an appeal.

30. Issues Analysis And The Determination

31. After going through the material on record, I find the issue is whether the delay in filing an appeal in time is explained and justified. Whether the grounds for stay of execution pending appeal are established and what are the costs.
32. In Kenya, a court may grant leave to appeal out of time if the applicant can show sufficient cause for the delay. The applicant must provide a reasonable explanation for the delay and file the application without delay.
33. Some factors that a court may consider when deciding whether to grant leave to appeal out of time include:
 - Length of delay: The length of time the appeal was delayed
 - Reason for delay: The reason or reasons for the delay
 - Chances of success: The likelihood that the appeal will succeed if granted
 - Prejudice to Respondent: The degree of prejudice to the Respondent if the application is granted
 - Public interest: Whether the appeal raises issues of public importance
 - Conduct of the parties: The conduct of both parties involved
 - Balancing interests: Balancing the interests of the party seeking the appeal against the interests of the party with a constitutionally protected right of appeal

The applicant should apply for condonation as soon as they become aware of the need to do so. The court may be less favorable if the applicant delays applying without a satisfactory explanation.
34. Njoroge v Kimani (Civil Application Nai E049 of 2022) [2022] KECA 1188 (KLR) Mativo J as he then was, held;

“Condonation cannot be had for the mere asking. An applicant is required to make out a case entitling him to the court's indulgence by showing sufficient cause and giving a full, detailed, and accurate account of the causes of the delay. In the end, the explanation must be reasonable enough to excuse the default.

13. Equally important is that an application for condonation must be filed without delay and/or as soon as an applicant becomes aware of the need to do so. Thus, where the applicant delays applying for condonation despite being aware of the need to do so, or despite being put on terms, the court may take a dim view, absent a proper and satisfactory explanation for the further delays.”



- 35. The impugned ruling was delivered on 16th October 2023, whereas the current application was filed on 13th May 2024, which is a delay of seven months.
- 36. The typed copy of the ruling read on 16th October 2023 was readily available on 17th October 2023, and the applicant advances no reasons as to why her Advocate applied for a copy of the ruling on 30th October 2023.
- 37. The applicant explains that there was a delay in obtaining a copy of the ruling and the inadvertence occasioned when her advocates could not reach her for a while because of unforeseen network issues with her then faulty mobile phone. There is no evidence exhibited to support her averment, which could justify almost seven(7) months of delay. The is inclined to agree with the Respondent that the applicant has advanced no plausible reason for the undue delay in taking action after the delivery of the ruling, and as such, it is evident that the applicant’s application is an afterthought.
- 38. Thus, the court finds no merit in the application and makes the orders;
 - i. The application is dismissed with no orders as to costs as the parties are of the same family and dispute family matters.

JUDGMENT, DATED, SIGNED, AND DELIVERED AT NYANDARUA THIS 20TH DAY OF DECEMBER 2024

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CHARLES KARIUKI
JUDGE

