



In re Estate of Michael Njuguna Kamaru (Deceased) (Miscellaneous Civil Case 124 of 2021) [2022] KEHC 10293 (KLR) (26 May 2022) (Ruling)

Neutral citation: [2022] KEHC 10293 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS CIVIL CASE 124 OF 2021
MM KASANGO, J
MAY 26, 2022**

IN THE MATTER OF THE ESTATE OF MICHAEL NJUGUNA KAMARU (DECEASED)

JANET NYAGUTHII NJOROGE.....1ST APPLICANT

CHARLES KAMAU KAMARU.....2ND APPLICANT

HANNAH WANJIKU KAMARU.....3RD APPLICANT

VS.

SAMUEL NYAGA KAMARU.....RESPONDENT/PROTESTOR

RULING

1. The application before this court is dated May 20, 2021. It is filed by three applicants. They seek leave of this court to file an appeal out of time against a Ruling of the Kiambu Chief Magistrate’s Court. I wish to reproduce the applicant’s prayer in that application as follows:-

“That this honourable court be pleased to allow the applicant to file appeal out of time against the judgment of the senior resident magistrate court in Kiambu the Honourable Magistrate G. Omodho in respect of the applicants’ application for confirmation of Grant dated made and/or delivered on November 29, 2019 out of time.”

2. There is no indication from the above prayer of the case in the Kiambu Chief Magistrate’s Court to which the above prayer. On that ground alone, the application shall fail. Court orders are not granted in vain, as in this case, that a blanket order be granted for leave to file an appeal where yet the case to which such an intended appeal refers to is not stated.
3. The applicants have failed to state a reason why they were unable to file an appeal in time. Section 79G of the *Civil Procedure Act* required the appeal be filed within 30 days from November 29, 2019. Section 79G provides:-

“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.”

4. As rightly stated in the applicant’s submissions the Supreme Court by its decision considered court’s discretion to file appeal out of time in the case *Nicholas Kiptoo Arap Korir Salatvs. Independent Electoral And Boundaries Commission & 7 others*(2014) eKLR and stated:-

“From the above caselaw, it is clear that the discretion to extend time is indeed unfettered. It is incumbent upon the applicant to explain the reasons for delay in making the application for extension and whether there are any extenuating circumstances that can enable the court to exercise its discretion in favour of the applicant.

This being the first case in which this court is called upon to consider the principles for extension of time, we derive the following as the under-lying principles that a court should consider in exercise of such discretion:-

1. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court;
 2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court
 3. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;
 4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
 5. Whether there will be any prejudice suffered by the respondents if the extension is granted;
 6. Whether the application has been brought without undue delay; and ...”
5. The applicant failed to shift the burden to satisfy the court that there is a basis to extend time to file appeal out of time.
6. On the whole, the application dated May 20, 2021 is incompetent and it lacks merit. It is dismissed with costs.
7. File is hereby closed.

RULING DATED AND DELIVERED AT KIAMBU THIS 26TH DAY OF MAY, 2022.

MARY KASANGO

JUDGE

Coram:

Court Assistant : Mourice

For applicant : - Ms. Anne Ngigi

For Respondent : - No appearance

RULING delivered virtually.



MARY KASANGO
JUDGE

