



**M’Impwi & another v Ntuarithi (Miscellaneous Application
E066 of 2022) [2022] KEHC 16648 (KLR) (21 December 2022) (Ruling)**

Neutral citation: [2022] KEHC 16648 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
MISCELLANEOUS APPLICATION E066 OF 2022
TW CHERERE, J
DECEMBER 21, 2022**

BETWEEN

JOSEPH GITONGA M’IMPWI 1ST APPLICANT

JOEL GITUMA M’ARITHI 2ND APPLICANT

AND

LUCY KAMAMI NTUARITHI RESPONDENT

RULING

1. By a ruling dated June 30, 2022, the trial court in Maua Succession Cause No E167 Of 2021 dismissed the Applicants’ protest and ordered that any transfers made to deceased’s estate be cancelled.
2. By a notice of motion dated November 4, 2022, Applicants seek leave to appeal the ruling dated June 30, 2022, out of time on the grounds that the ruling and proceedings were not supplied until October 26, 2022,
3. Respondent opposed the application vide a replying affidavit sworn on December 7, 2022 in which she contends among other issues that the delay on Applicants’ part is inordinate and the application is an afterthought geared towards preventing this litigation from coming to an end.
4. I have considered the application in the light of affidavits on record and annexures thereto. Applicants’ contention that the that the ruling and proceedings were not supplied until October 26, 2022 has not been proved and I therefore find that the delay on the part of the Applicants has not been explained to the satisfaction of the court.
5. The foregoing notwithstanding, it should be the court’s last resort to deny a party a chance to be heard. Judicial authority to do justice to all, vested on this court by Article 159 of the *Constitution* cannot be said and be seen to be exercised if the courts were to deny a party a chance to be heard on merit only on the ground that they have approached the court outside the time limited for filing an appeal.



6. In conclusion, I find that a case has been made out for allowing the Applicants to file an appeal out of time and it is therefore hereby ordered:

1. Applicants have 45 days from today's date to file and serve the record of the intended appeal
2. Costs shall be borne by Applicants

DELIVERED IN MERU THIS 21st DAY OF December 2022



WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistant - Morris Kinoti

For Applicants - Mr. Nyamu for Mbaabu M'Inoti & Co. Advocates

For Respondent - Ms. Masamba for Mithega & Kariuki Advocates

