



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT BUNGOMA**

**P & A NO. 68 OF 2005**

**IN THE MATTER OF THE ESTATE OF SHADRACK KHAOYA MASONI-DECEASED**

**MESHACK KHAOYA.....1<sup>ST</sup> PETITIONER**

**CHARLES SOITA KHAOYA.....2<sup>ND</sup> PETITIONER**

**FRED NYONGESA KHAOYA.....3<sup>RD</sup> PETITIONER**

**RULING**

This ruling relates to 2 applications. The first application proffered by Fred Nyongesa Kahoya, dated 17<sup>th</sup> October, 2019, seeks;

1. That the 1<sup>st</sup> and 2<sup>nd</sup> petitioners be directed to sign the requisite transfer forms RL 19 and RL 7 mutation forms and any other requisite form transferring the suit land to the beneficiaries to give effect to the certificate of confirmation of grant dated 21<sup>st</sup> December, 2017 within 14 days .
2. That in default, this honourable court do order the Deputy Registrar of this court to sign the said transfer forms RL 19, RL 7, mutation forms and any other requisite forms on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> respondents to give effect to the certificate of confirmation of grant dated 21<sup>st</sup> December, 2017.
3. Costs of the application.

The grounds in support are that the certificate of confirmation was issued jointly to Fred Nyongesa Khaoya, Peter Mafunga Kahoya and Charles Soita Kahoya on the 21<sup>st</sup> December, 2017. That sub-division and transfer of the property has not been done to date because the 1<sup>st</sup> and 2<sup>nd</sup> respondents have refused to execute the requisite forms to give effect to the certificate of confirmation granted to them and is hampering other beneficiaries from acquiring titles to the land.

The second application dated 21<sup>st</sup> January, 2020 proffered by Meshack Khaoya and Charles Soita Khaoya seeks;

1. That this court be pleased to extend time for giving notice of intention to appeal and leave to appeal against the judgement herein to the applicants.
2. Costs.

The applicants depone that this court delivered its judgement on 21<sup>st</sup> September, 2017. That their advocate then filed a notice of appeal on 25/9/2017 but for unknown reasons, the same was not pursued and now they have new counsel on record who withdrew the appeal. That the intended appeal has high chances of success.

Directions were given that the two applications be heard together and further that the same be disposed of by way of written submissions. All the parties complied.

Having scrutinized the respective applications, the affidavits both in support and in reply thereto and the rival submissions presented by the parties, the 2<sup>nd</sup> application dated 21<sup>st</sup> January, 2020 ought to be disposed of first as it will have a direct bearing on whether the 1<sup>st</sup> application will stand.

The applicant seeks this court to invoke its discretionary power and extend time within which to issue notice appeal for the sole reason that his advocate failed to take steps to have the appeal prosecuted.

This court delivered its judgement on 21<sup>st</sup> September, 2017. The applicant filed his notice of appeal on 26<sup>th</sup> September, 2017 through the firm of Annet Mumalasi & Co. advocates.

By consent dated 6/2/2018, the firm of Athung'a & Co. Advocates came on record in place of Annet Mumalasi, The incoming firm of advocates then filed an application in January, 2019 seeking to revoke the certificate of confirmation of grant which application was withdrawn on 1/7/2019. The 3<sup>rd</sup> petitioner the filed his application on the 31<sup>st</sup> October, 2019.

**In *Aviation Cargo Support Limited V St. Mark Freight Services Limited [2014] eKLR*, G.B.M. Kariuki, JA. observed;**