



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**SUCCESSION CAUSE NO.20 OF 2009**

**IN THE MATTER OF THE ESTATE OF M'ETUANKURE KARITHO (DECEASED)**

**GRACE MBERO.....PETITIONER**

**VERSUS**

**BRONICA KABICHU M'ETUANKURE.....INTERESTED PARTY**

**RULING**

1. Application dated 19<sup>th</sup> June 2019 was filed on 26<sup>th</sup> June 2019 seeking that the court grants applicant extension of time to file notice of intention to Appeal against the Ruling of the court delivered on 22<sup>nd</sup> November 2018. The applicant also sought stay of execution of the ruling delivered on 22<sup>nd</sup> November 2018 pending hearing and determination of the application and the proposed appeal.
2. The application was based on the grounds on the face of the application to the effect that delay was due to courts heavy workload and that what is involved are technical issues of law and facts and that it will be fair and just to allow the applicant to appeal out of time. The Affidavit was also based on the grounds in the supporting affidavit of Bronica Kabichu M'Etuankure sworn on 19<sup>th</sup> June 2019.
3. In the affidavit the applicant said she requested her advocate to appeal but his file was not available she claimed that by the time ruling was typed , time for filing appeal had lapsed.
4. Annexed to affidavit is a letter dated 23.11.2018 purported written to Deputy Registrar but which there is no receiving stamp and there is no response from DR saying that. Typed copy of Ruling could not be availed. There is also no certificate of delay by the Deputy Registrar.
5. The Applicant in her affidavit has also further said that delay in filing appeal on time was not deliberate as the same was occasioned by the delay in getting all the necessary documents. Applicant averred that she had a very good appeal against the ruling of the trial court which was arguable and meritorious and had a good likelihood of success.
6. In the Respondents Replying Affidavit it was argued the application lacks merit and is an afterthought brought purposely to stop the administration of the estate of the deceased. It was also averred that the applicant had not advanced any good reason for the delay. It was averred that there was no legal requirement for a copy of the ruling to lodge a notice of appeal. It was also averred that annexure BKM2 was a false document. The application was canvassed by way of written submissions.
7. In consideration of the grounds supporting the application and the submissions by both parties, this court finds that the delay to file Notice of Appeal and the delay to seek extension of time to file Notices of Appeal over the delay in applying for leave to appeal against the ruling delivered on 22<sup>nd</sup> November 2018 is inordinate.
8. The Letter purported to show application to supply copy of ruling was not acted upon in time doesn't have receiving stamp and the applicant didn't obtain a certificate of Delay from the Deputy Registrar to support her allegations that it's the court which delayed in supplying the copy of ruling. There is also no receipt to show that the applicant paid to supply of copying the sound ruling.
9. I do therefore, agree with the Respondent that the application lacks merit and is an afterthought. The same is dismissed with costs to the Respondent.

**HON A. ONG'INJO**

**JUDGE**

**RULING DELIVERED, DATED AND SIGNED IN COURT ON 12<sup>TH</sup> DAY OF MARCH 2020.**

**In the presence of:**

C/A: Kinoti :-

Petitioner:- Mr Gichunge holding brief for H. Gitonga for Petitioner

Interested Party:-Ms Otieno for Applicant.

**HON A. ONG'INJO**

**JUDGE**