



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

SUCCESSION CAUSE NO.14 OF 2015

IN THE MATTER OF THE ESTATE OF THE LATE VIRGINIA SANGALO LUSENO - (DECEASED)

WILLIAM NYONGESA FESTO LUNYELEKWE.....PETITIONER/APPLICANT

AND

KENNEDY WANJALA MABONGA.....RESPONDENT

TRUSTEES FOR WOMEN FOR WOMEN

COMMUNITY BASED ORGANISATION.....INTERESTED PARTY

RULING

1. The Applicants Chamber Summons application herein dated **29th June, 2020** prays that he be granted leave to amend his chamber summons application dated **10th June 2020**. The gist of the application as contained in the grounds thereof as well as the supporting affidavit of **KEPHER NAKITARE** advocate is that the said application had some typographical error and thus it was necessary that the same be amended.

2. He deponed that instead of seeking for an extension of time to lodge a Notice of Appeal out of time it sought an extension of time to lodge a record of appeal out of time. That he only realised the said error after the application had been set down for hearing and that is why he sought to file this application without any delay. It was his case that the ends of justice would be met if this application is allowed.

3. The Respondent by a replying affidavit dated **7th July 2020** has opposed the above application as being incompetent and bad in law. He said that the court had already fixed the main application for a ruling on the **23rd July 2020** and that the Applicants application was premised on the issues he raised in his reply to the main application. He urges this court to dismiss the same.

4. The court has perused the application as well as the reasons given by the Applicant. The court will ordinarily dismiss such an application if the same does not raise any reasonable issues and if it is just an abuse of the courts time. It shall also dismiss if it has been brought inordinately late.

5. Having carefully read the same and being seized of the issues herein, this court is inclined to allow this application for the reason that the Respondent stands to suffer no prejudice if the application is allowed. The main issue at hand was that the prayers indicated **“record of appeal”** instead of **“notice of appeal”**. Whichever way the respondent would still be in a position to ventilate his opposition in the intended application.

6. It is equally instructive to note that the Respondent has made this application without any delay and it appears from the letter dated **23rd June 2020** which is on record that the counsel for the Applicant did notify the counsel for the Respondent of the intention to amend his application.

7. Rule 73 of the Probate and Administration Rules empowers this court to make such necessary decision that are just an equitable to see that justice is met. This of course is buttressed by the provisions of Article 159 of our current Constitution.

8. In the premises the application is allowed and the Applicant ordered to amend his application and serve the same within the next 14 days from the date herein. The respondent shall have the costs of this application.

Dated, signed and delivered at Kitale this 30th day of July 2020.

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H. K. CHEMITEI

JUDGE

30/7/2020

In the presence of:

Ms Wanjala for Munialo for Respondents

Mr Bororio for Kraido for Applicant

Court Assistant – Kirong

Ruling delivered in chambers.