



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 1633 OF 2009

IN THE MATTER OF THE ESTATE OF EUTYCHUS WANYOIKE NJAU (DECEASED)

KENNEDY KIMANI NYOIKE..... APPLICANT

VERSUS

GEOFFREY NG'ANG'A NYOIKE.....1ST RESPONDENT

JAMES KIARIE NYOIKE.....2ND RESPONDENT

EUTYCHUS NYOIKE MBURU.....3RD RESPONDENT

RULING

1. The deceased Eutyclus Wanyoike Njau died intestate on 21st August 1989. He left a widow Beatrice Kanyi Nyoike and ten (10) children. The widow and her son Leonard Kamau Wanyoike petitioned Kiambu Court for the grant of letters of administration. The deceased's other son Humphrey Njau Nyoike cross-petitioned. The widow died. A joint grant was issued to Leonard Kamau Wanyoike and Humphrey Njau Nyoike. Humphrey Njau Nyoike died on 20th February 2005. Leonard Kamau Wanyoike became the sole administrator. The estate was distributed.

2. Following application by Elisheba Nyambura Wanganga (a daughter of the deceased) the grant was revoked on 7th April 2015.

3. Elisheba Nyambura Wanganga, James Kiarie Nyoike (son of the deceased), Antony Nyoike Mbutu (son of the late Eunice Waceke Nyoike who was a daughter of the deceased) and Eutyclus Nyoike Mburu (son of another late daughter of the deceased called Ann Njeri Nyoike) filed an application seeking to be appointed as joint administrators of the estate of the deceased. The application was allowed on 24th May 2016 when the joint administrators appointed were Geoffrey Ng'ang'a Nyoike (son of the deceased), James Kiarie Nyoike (son of the deceased), the appellant Kenneth Kimani Nyoike (son of the late Humphrey Njau Nyoike) and Eutyclus Nyoike Mburu.

4. The appellant was aggrieved by the appointment and filed a Notice of Appeal on 7th June 2016. He complained that he was not one of the sons of the deceased, and therefore the court fell into error when it appointed him. He also complained that his consent had not been sought before the appointment was done.

5. In his application dated 7th November 2017 he applied for extension of time to seek leave to appeal the decision. He stated that he had been advised that he required leave of this court to be able to appeal its ruling. By the time he realized this he had already filed the Notice of Appeal. The Notice of Appeal had been filed on time. It has taken him over one year to seek leave. He stated that subsequent to the ruling he instructed his then advocates M/s. Kosgey Masese & Co. Advocates to file an appeal. They filed the Notice of Appeal. Subsequently, he instructed the firm of Owang & Associates who advised that he required leave. This was over one year down the line. He sought that the omission to seek leave and the lapse of time should not be visited on him. It should be visited on his former advocates.

6. The application was not opposed. There was delay in bringing the application for leave, but the appellant has offered an explanation which is reasonable.

7. A party who wishes to exercise his right of appeal has to be allowed. In any case, under **Article 164 (3) (a)** of the **Constitution** and **Section 47** of the **Law of Succession Act (Cap. 160)** the appellant may not have required leave to approach the Court of Appeal.

8. I allow the application. The Notice of Appeal filed on 7th June 2016 shall be deemed to have been filed with leave.

9. I make no orders as to costs.

DATED and DELIVERED at NAIROBI this 23RD day of JULY, 2019.

A.O. MUCHELULE

JUDGE