

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1506 OF 1997

IN THE MATTER OF THE ESTATE OF GEORGE RAGUI KARANJA (DECEASED)

RULING

1. The application that I am supposed to be determining is dated 23rd May 2017. It seeks leave to appeal against a ruling I delivered on 5th May 2017. The applicants were aggrieved of the orders that I made in that ruling. The application is opposed. The respondents raise two issues. The first one is that that they are the persons indicated in the application as the applicants, and as such they are at liberty to apply to withdraw the application. Secondly, it is argued that the application is incompetent as no notice of appeal has been filed contrary to Rule 75 of the Court of Appeal Rules. There is no response to the averments made in the replying affidavit.

2. Directions were given on 31st May 2017 that the application be disposed of by way of written submissions. Both sides have complied; I have read through both sets of written submissions and noted the arguments made there in.

3. On the first issue, the actual applicants are indicated as the respondents, while the persons who should be the respondents are indicated to be the applicants. The said applicants have not addressed this issue, and have not sought to amend their application to correct the position. This should be an ideal excuse to have the application dismissed. Alternatively, I should even allow the respondents' plea that I should mark it as withdrawn at their behest; after all it is their application. This is clearly a case of sloppy draftsmanship. However, I am enjoined by the law to apply it substantially rather than focusing more on the technicalities. I shall therefore turn a blind eye to the anomaly.

4. Regarding the other issue, I do note that Rule 75 of the Court of Appeal Rules requires the prospective appellant to file a notice of his intention to file appeal at the superior court within fourteen (14) days. This is a statutory requirement. Leave of court is not necessary for the filing of the notice. Leave is only necessary for the filing of the appeal itself where there is no direct right of appeal or where appeal lies with leave.

5. For avoidance of doubt, the said provision states as follows-

'(1) Any person who desires to appeal to the Court shall give notice in writing, which shall be lodged in duplicate with the registrar of the superior court.

(2) Every such notice shall, subject to Rules 84 and 97, be so lodged within fourteen days of the date of the decision against which it is desired to appeal.'

6. It is common ground that no notice of appeal has been filed. No appeal can lie where no notice of appeal has been filed. It follows therefore that leave to appeal cannot be granted in the circumstances. The Motion herein should and is hereby dismissed with costs.

DATED, SIGNED and DELIVERED at NAIROBI this 29TH DAY OF SEPTEMBER, 2017.

W. MUSYOKA

JUDGE