



IN THE HIGH COURT AT MURANG'A

MISC CIVIL APPLICATION NO 87 OF 2013

IN THE MATTER OF THE ESTATE OF JAMES NJOROGE NJUGUNA, DECEASED

AND

***IN THE MATTER OF AN APPLICATION FOR EXTENSION OF TIME TO FILE APPEAL
AGAINST AN ORDER CONFIRMING THE GRANT IN THIKA CM CAUSE NO 60 OF 2009***

DAVID NJUGUNA NJOROGE.....APPLICANT

VERSUS

MARY NJERI NJOROGE.....RESPONDENT

RULING

1. The grant of representation issued in respect to the estate of the Deceased herein in **Thika CM Succession Cause No 60 2009** was confirmed on 7th June 2013 by that court and a certificate of confirmation of grant of that date issued. **David Njuguna Njoro**, the Applicant herein, is one of the beneficiaries named in that certificate of confirmation of grant. He has now applied by notice of **motion dated 3rd October 2013** for leave to appeal out of time against the aforesaid order of confirmation of grant. He has sworn an affidavit in support of his application and has deponed, *inter alia*, that he has not been indolent as his advocate has already applied for the proceedings of the lower court, and further that his intended appeal has high chances of success. He has annexed to his affidavit a draft memorandum of appeal. His main complaint appears to be that the lower court disinherited him and his siblings, notwithstanding that the certificate of confirmation of grant shows that he was to get various shares of the Deceased's assets.

2. The Respondent, **Mary Njeri Njoro**, who was the administrator of the estate and also a beneficiary, has opposed the application by **grounds of opposition dated 14th March 2014**. Those grounds are that there has been inordinate delay in applying which has not been explained; that certified copies of proceedings and ruling are not a prerequisite to filing an appeal; and that in any event the application is an afterthought. No replying affidavit appears to have been filed.

3. The right of appeal to the High Court from any order or decree made by a Resident Magistrate in respect of any estate is donated by **section 50(1) of the Law of Succession Act, Cap 160**. The Act however does not set any time frame within which such appeal may be filed. The **Probate and Administration Rules** made by the **Chief Justice** under **section 50A** of the Act do not appear to make provision for such time-frame.

4. That leaves us with the **Civil Procedure Act, Cap 21** which applies to proceedings in the High Court and, subject to the **Magistrates' Courts Act, Cap 10** to proceedings in subordinate courts. Under **section 79G of Cap 21** an appeal from a subordinate court to the High Court must be filed within a

period of 30 days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of the copy of the decree or order. However, under the *proviso* to that section an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not appealing in time.

5. The application herein was canvassed by way of written submissions with brief oral highlighting. I have considered those submissions. The **Supreme Court** in **Nicholas Kiptoo arap Korir Salat –vs – IEBC & 7 Others** laid down the following as the under-lying principles that a court should consider in exercise of discretion to extend time -

- (i) Extension of time is not the right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court.
- (ii) A party who seeks extension of time has the burden of laying a basis to the satisfaction of the court for that extension.
- (iii) Whether the court should exercise the discretion to extend time is a consideration to be made on a case by case basis.
- (iv) Whether there is a good reason for the delay. The delay should be explained to the satisfaction of the Court.
- (v) Whether there will be any prejudice suffered by the respondent if the extension is granted.
- (vi) Whether the application has been brought without undue delay.
- (vii) Whether, in certain cases, like election petitions, the public interest should be a consideration for extending time.

6. Bearing in mind all the above principles, and given the nature of the matter dealt with by the lower court, I will exercise the courts discretion in favour of the Applicant and allow the application. The Applicant shall file his memorandum of appeal within fourteen (14) days from the date of delivery of this ruling.

7. Costs of the application shall be in the appeal. If ultimately no appeal is filed as above, the Respondent shall have the costs. it is so ordered.

DATED AND SIGNED AT MURANG'A THIS 25TH DAY OF FEBRIARY 2015

H P G WAWERU

JUDGE

DELIVERED THIS DAY OF FEBRUARY 2015