

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. APP. NO.90 OF 2014

PETER KARIUKI NJOROGE.....

.....**APPLICANT**

VERSUS

HANNAH NDUTA NJUGUNA.....

RESPONDENT

RULING

The Applicant, Peter Kariuki Njoroge was aggrieved by the judgment of the subordinate court delivered on 3rd June 2013 in **Kiambu Chief Magistrate’s Court Succession Cause No.196 of 2010, In the Matter of the Estate of Mithanga Kuria alias Muthanga Kuria alias Njoroge Kuria**. The Applicant did not file appeal within the requisite period. He now seeks leave of the court to appeal against the said decision of the court out of time. The Applicant explained that he failed to file the appeal on time because he erroneously filed an application for review in the same subordinate court instead of filing an appeal before this court. By the time he discovered his error, the thirty (30) days period by which he was required to file the appeal had already expired. He therefore craved for this court to exercise its discretion in his favour and grant him leave to appeal out of time.

The application is opposed. The Respondent filed a replying affidavit in opposition to the application. In her view, there was no ground upon which the court could exercise its discretion to grant the applicant leave to lodge an appeal out of time. She deponed that the decision rendered by the trial court was sound as it was based on the evidence adduced. The Applicant had not presented to the court any evidence to challenge the finding made by the trial court. She urged the court to dismiss the application with costs.

At the hearing of the application, this court heard oral rival submission made by the Applicant and the Respondent. They essentially reiterated the contents of the application and the replying affidavit. The issue for determination by this court is whether the Applicant made a case for this court to grant him leave to appeal out of time. In determining whether or not to grant such application, this court is required to consider the reasons given by the Applicant for his failure to appeal in time, the time it took before the application for extension of time was filed, and finally, an indication on whether the Applicant has arguable grounds of appeal. In the present application, the Applicant was required to have lodged the appeal by 3rd July 2013. He filed the present application seeking leave to appeal out of time on 9th May 2014. The Applicant explained that he had failed to file the appeal in time because he had applied his energy towards prosecuting an application for review before the same subordinate court. That application for review was dismissed. It was then that the Applicant moved this court seeking to be granted leave to appeal out of time. The Applicant did not annex a draft memorandum of appeal to his application. This court is therefore unable to assess whether the Applicant has an arguable appeal that is capable of being considered by this court.

On evaluation of the reasons advanced by the Applicant, it was clear to this court that it cannot exercise its discretion in favour of the Applicant because the Applicant gave no cogent reasons for his failure to appeal in time. Having perused the judgment of the subordinate court, this court is of the view that the issues in dispute were determined. The matter ought to be brought to an end.

In the premises therefore, the application for extension of time filed on 9th May 2014 lacks merit and hereby dismissed with costs. It is so ordered.

DATED AT NAIROBI THIS 25TH DAY OF JULY, 2014.

L. KIMARU

JUDGE