



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS
MISCELLANEOUS APPLICATION NO. 865 OF 2005
PAUL MBURU MUIRURI.....APPLICANT
VERSUS
1. ESTHER WANGUI MUIRURI
2. LAWRENCE GAKUYA MUIRURI
3. MARY MUGURE MUIRURI
4. WANJIRU MUIRURI.....RESPONDENTS

R U L I N G

This application for leave to file appeal out of time (**by notice of motion dated 9th June 2005**) was filed on 10th June 2005. It came up for hearing on 11th December 2006 but could not be reached. It was again fixed for hearing on 17th September 2007 but was adjourned for a reason that was not recorded. On 18th November 2011 it was not reached and was fixed for hearing on 13th December 2011 when it was finally heard. So, the application was not disposed of as quickly as applications of this nature should be.

I have read the supporting and supplementary affidavits, and also the replying affidavit. I have also given due consideration to the submissions of learned counsels appearing.

The intended appeal is against the decree of the lower court passed on 24th November 2004 in a succession cause. By that decree the court ordered that the Deceased's land, L.R. CHANIA/KANYONI/493, be divided equally between the two houses of the Deceased.

Grounds of appeal intended to be raised include the following:-

1. That there were other properties of the Deceased that were not taken into account when distribution was ordered.
2. That the Deceased's testamentary wishes were not taken into account.

The application having been filed on 10th June 2005, there was a delay of about seven (7) months. The same is fully explained by the Applicant's ill-health, and I accept the explanation.

The dispute here involves land. It is just that the Applicant be permitted to exhaust his right of appeal.

I will therefore allow the application. The applicant is granted leave to appeal out of time. Memorandum of appeal may be filed within ten (10) day of delivery of this ruling. The Respondents will have costs of this application.

It is so ordered.

DATED AT NAIROBI THIS 7th DAY OF FEBRUARY 2012

H.P.G. WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 10TH DAY OF FEBRUARY 2012