

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

MISC. APPLICATION NO. 46 OF 2011

MICHAEL MWANGI JOROMAPPLICANT

VERSUS

ROBIN NJUE NJAGIRESPONDENT

RULING

This is an application for the Applicant to file an appeal out of time. The proposed appeal is against the judgment of the SRM's court at Runyenjes in ***SUCC. CAUSE NO.10 OF 2010***. The Applicant was the objector in the cause. The estate in question was that of the deceased Beatrice Iguna Joram who died on 16th August 2009 leaving behind two sons and four married daughters. The Applicant and the Respondent are the two sons. The Respondent was the Petitioner in the Cause. The deceased had provided for the two during her life time by giving each two acres. She had been left with one acre comprised in LR KAGAARI/KANJA/6235. There was no dispute that the wish of the deceased was that this parcel be inherited by her four daughters.

The Applicant sought that he be registered in respect of 0.5 acres of the suit land to hold in trust for her two sisters and that the Respondent to be registered in respect of the other 0.5 acres to hold in trust for the remaining sisters. His argument was that if the four sisters were chased away from their marriage they would have something at their mother's home to fall back on.

The case for the Respondent was that, as indicated by the deceased, the suit land should immediately go to his four sisters as joint owners. The court agreed with him and this is what aggrieved the Applicant who now seeks to challenge the decision if allowed to appeal.

The judgment was rendered on 26th April 2011. 28 days allowed for appeal ended on 23rd May 2011. The present application was filed on 30th May 2011. The Applicant is therefore late by one week. He states that he was late because he applied for proceedings on 11th May 2011 and they were not made available until 26th May 2011 at 5.00pm. The replying affidavit does not challenge this factual position, but the Respondent contends that the appeal is frivolous since the trial court made a fair decision.

The dispute herein is over family land and the delay in question is not inordinate. It is established practice of the court that all land disputes should, wherever possible, be finally determined by the court and no party who desires to be heard by the court should be driven out of the seat of justice by the technical application of the rules.

(SIMPSON NDERITU KARITU –VS- MARTHA WATETU KARITU AND ANOTHER, CIVIL APPL. NO. 168 OF 2004 AT NAIROBI).

The time for the filing of the appeal is extended by 14 days. The Applicant has been indulged and will pay costs of the application.

DATED, SIGNED AND DELIVERED AT EMBU THIS 25th DAY OF JULY 2011

A.O. MUCHELULE
JUDGE