

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
SUCCESSION CAUSE NO. 1942 OF 2003

IN THE MATTER OF THE ESTATE OF WARINGA GITAU (DECEASED)

CECILIA WANJIKU GITAU.....OBJECTOR

VERSUS

FELISTA WANJIRA NJOGU.....PETITIONER

R U L I N G

On 8th February 2007, Rawal J rendered a ruling in regard to objection proceedings that were instituted by the objector herein. The objection proceedings related essentially to the determination of who the beneficiaries of the estate of the deceased are and also decide on how the estate of the deceased should be distributed. After hearing the parties, the learned judge ruled that the objector and the respondent were indeed beneficiaries of the estate of the deceased. She further distributed the parcels of land that comprise the estate of the deceased to the objector and the petitioner.

Matters appear to have come to rest until 9th September 2008 when the objector filed an application before this court pursuant to the provisions of **Rules 59 and 73 of the Probate and Administration Rules**, and **Section 7 of the Appellate Jurisdiction Act**, seeking to be granted an order of extension of time to file notice of her intention to appeal to the Court of Appeal from the decision of Rawal J. The grounds in support of the application are contained in the annexed affidavit of the objector. The objector explained the reason why she failed to file the notice of appeal in time was on account of dereliction of duty by his former advocates who made her to believe that a notice of appeal had been filed while in actual fact no such notice had been filed. The objector pleaded with the court not to punish her on account of mistake by her previous counsel. The objector averred that she ought to be given an opportunity to ventilate her appeal to the Court of Appeal because she was seriously aggrieved by the decision rendered by this court. The application is opposed. The petitioner swore a replying affidavit in opposition to the application. In essence, she deponed that the objector had failed to put forward sufficient reasons that would entitle this court to extend time for the objector to file notice of appeal out of time. The petitioner was of the view that the objector was guilty of inordinate delay and therefore to grant the application would delay the just determination of the dispute regarding the distribution of the deceased's estate. She urged the court to dismiss the application with costs.

At the hearing of the application, I heard rival arguments made by Mr. Macharia for the objector and by Mr. Ngugi for the petitioner. I have carefully considered the said submissions. I have also read the pleadings filed by the parties herein in support of their respective opposing positions. The objector wishes to appeal against a decision rendered by this court to the Court of Appeal. The objector predicates her application on **Section 7 of the Appellate Jurisdiction Act**. The said section provides that the High Court “*may extend time for giving notice of the intention to appeal*” from the decision of the High Court to the Court of Appeal. Under **Section 5(1) of the said Act**, the Rules Committee was established to make rules for the regulation of practice and procedure of the Court of Appeal in respect to appeals filed to the said court. Under **Rule 4 of the Court of Appeal Rules**, the power to extend time for the doing of any act to be done under the rules is reserved to the Court of Appeal.

It is therefore clear that it is only the Court of Appeal which has power to extend time for any litigant who wishes to appeal against a decision delivered by the High Court. **Section 7 of the said Act** is not therefore of assistance to the objector because even if this court were to extend time for the objector to appeal against the said decision of this court, the objector will still have to contend with the fact that she would be required to seek the leave of the Court of Appeal before she can lodge an appeal before the said court. Secondly, and more importantly, the reason advanced by the objector for failing to file the notice of appeal within the stipulated period does not hold. This is because a case is owned by the litigant. It is the duty of the litigant to pursue the progress of her case. It is not enough for a litigant to allege that her counsel duped her into believing that a notice of appeal had been filed yet in actual fact no such notice had been filed. The period that the objector took to make this “*discovery*” is so inordinate that it would constitute an injustice to the petitioner if this court were to extend time for the objector to file notice of appeal. The objector went to sleep for nineteen (19) months before she woke up to file the present

application seeking extension of time. The objector has been guilty of laches. To allow the application would amount to this court rewarding an indolent litigant.

In the premises therefore, this court finds no merit with the objector's application for extension of time. The same is hereby dismissed with costs to the petitioner.

DATED AT NAIROBI THIS 2ND DAY OF NOVEMBER, 2010

L. KIMARU
JUDGE