

REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
SUCCESSION CAUSE NO.441 OF 1984**

IN THE MATTER OF THE ESTATE OF WAKAPA PERE (DECEASED)

R U L I N G

By this application (amended summons dated 30th May 2002) **RICHARD NJENGA WAKAPA** seeks two orders –

- 1. Leave to file notice of appeal and appeal out of time against the court's orders of 19th October, 2001.**
- 2. Leave to appeal against the said orders of 19th October, 2001.**

The application is stated to be brought under unspecified provisions of the Appellate Jurisdiction Act and the Law of Succession Act. It is supported by an affidavit sworn by the Applicant on 6th March, 2002. The application is opposed by **JOHN WAKAPA PERE and FRANCIS NJENGA PERE**. John Wakaba Pere has filed a replying affidavit sworn on 8th October, 2002. I can find on the record none filed by Francis Njenga Pere.

I have considered the submissions of the learned counsels appearing. I must consider the second prayer in the application first. Upon perusal of the original court record I note that immediately after delivering her ruling on 19th October, 2001, Hon. Rawal, J made the following further order –

“COURT: As per the application by Mr. Manga leave to file an appeal is granted.”

The record shows further that Mr. Manga was then holding brief for Mr. Mutiso of **R. M. MUTISO & CO.**, the advocates who have filed the present application on behalf of **RICHARD NJENGA WAKAPA**. So, the second prayer in the application is made in error and is thus misconceived as there is already leave to appeal granted by Hon. Rawal, J on 19th October, 2001.

Regarding the first prayer for leave to lodge notice of appeal out of time, as already noted, no provision of the Appellate Jurisdiction Act, Cap.9, was quoted on the application. If the application was meant to be brought under Section 7 of the said Act, the same is misconceived. My reading of that Section as well as Section 6 of the same Act is that the Sections apply only to criminal matters and not to civil or succession matters. It seems to me therefore that the Applicant must seek extension of time to lodge notice and record of appeal under the Court of Appeal Rules. I therefore hold that the application in prayer No.1 is also misconceived as I appear to have no jurisdiction to grant what is sought.

Even if I had jurisdiction I would find it difficult to grant the order sought in prayer No. 1. There has been inordinate delay in bringing the application which has not been explained. But in the event I will strike out the application with costs for the reasons already given. Order accordingly.

DATED AND SIGNED AT NAIROBI THIS 13TH DAY OF OCTOBER 2004

H. P. G. WAWERU

JUDGE