



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
CIV SUIT 1402 OF 98[1]
IN THE MATTER OF THE ESTATE OF RICHARD KENYATTA
ORENGO – DECEASED
JOSEPH B. ORENGO)
TERESA NYANGWESO KENG’OTORE)..... APPLICANTS
V E R S U S
THE PUBLIC TRUSTEE RESPONDENT
AND
JOYCE NYABOKE MANOTI..... INTERESTED PARTY

R U L I N G

This application is seeking leave to appeal in Court of Appeal from this court’s decision of 25th February, 2002. It is made under Rule 73 of the Probate & Administration Rules made under the laws of Succession Act. Cap 160 (*referred to herein as the Act*).

Section 50 of the Act only provides for appeals to this court from any order or decree made by a Resident Magistrate or by Kadhi. That is the reason for this application. Needless to say that as the legislature in its wisdom has not provided for right of appeal from the order or decree of this court, it did not intend to give the right of appeal in all and in ordinary circumstances. Thus in my humble view the applicant has to satisfy that the intended appeal involves special circumstances and serious question of law.

The applicants have failed to plead or aver any of such circumstance or ground before me.

Furthermore, the applicants intend to appeal to the Court of Appeal. A *faltiori* therefore, they shall have to show that they have complied with rules of the said court. In my view, they have not done so.

Rule 39 of the Court of Appeal Rules provides for the procedure to be followed by an applicant under the present circumstances.

It stipulates:-

“ 39. In civil matters-

(a) where an appeal lies with the leave of the superior court application for such leave may be made informally, at the time when the decision against which it is desired to appeal is given, or by motion or chamber summons according to the practice of the superior court, within fourteen days of such decision;

(b) where an appeal lies with the leave of the Court, application for such leave shall be made in the manner laid down in rules 42 and 43 within fourteen days of the decision against which it is desired to appeal or, where application for leave to appeal has been made to the superior court and refused within fourteen days of such refusal.

The decision of this court was made on 25th February, 2002. This application is filed on 2nd October, 2002. No explanation is offered to justify the delay of almost seven months in making this application.

An attempt is made to explain the same by stating that proceedings were obtained on 10th September 2002. But from record of this court, the letter applying for certified copies of proceedings (and not of the Ruling) was filed on 25th February, 2002. But it is apparent from reading the application from the court record that the same was not copied to the Advocates of the Respondent herein. Once again the applicants have not complied with the provisions of Rule 81 (2) of Appeal Rules which is worded in mandatory format and requires the copy of application for certified copies to be sent to the Respondent. I am aware that this court is not a Court of Appeal but any court is entitled to look and rely on the provisions of the applicable laws to avoid giving a futile order, and I am doing just the same.

In view of the premises, I dismiss the application with costs.

Dated and delivered at Nairobi this 15th day of October, 2002.

K. H. RAWAL

JUDGE