



REPUBLIC OF KENYA



In re Estate of Aridon Ndetta Ingalula (Deceased) (Succession Cause E012 of 2024) [2025] KEHC 6472 (KLR) (12 May 2025) (Ruling)

Neutral citation: [2025] KEHC 6472 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE E012 OF 2024**

S MBUNGI, J

MAY 12, 2025

IN THE MATTER OF THE ESTATE OF ARIDON NDETTA INGALULA (DECEASED)

BETWEEN

PATRICK AMIMO INGALULA APPLICANT

AND

ESHITEMI MISANGO NDETTA RESPONDENT

RULING

1. By notice of motion dated 12.9.2024 brought under Section 79 (G) *Civil Procedure Act*, Article 48 and 50 (1) of the *constitution* Section 3 and 3A of the *Civil procedure Act*, Order 51 Rule 1 of the *Civil Procedure Act* seeking the courts leave to file an appeal out of time against the Judgment delivered on 2.5.2024 by Honourable J.R Ndururi-SPM in Kakamega CMSUCC Case No. 51 of 1977 and also for the costs for the Application to be in cause.
2. The Application is supported by the grounds on its face, and supporting affidavit sworn by the Applicant on 12.9.2024
3. The Application is opposed by the Respondent vide a replying affidavit sworn by himself dated 23.10.2024.
4. The parties and counsels agreed to put in submissions to dispose off the Application.
5. At the time of writing the ruling, it is only the respondent who had put in submissions, which are on record.
6. I have looked at the Application , supporting affidavit, replying affidavit and submissions filed by the Respondent.



7. Applicants case is that the delay in filing of the Appeal it is a result of his ill health as a result of his old age and financial constraints which made him not to be able to instruct a counsel to lodge the appeal in time.
8. He further avers that his appeal has high chances of success, and that the delay in filing the appeal was inadvertent and excusable for it was due to failure or lapse in communication between him and his advocates.
9. In response , the Respondents case is that reason of old age is not a reason the applicant has not produced any medical documents to prove that his old age has affected his efficacy since despite the alledged old age he filed a review of the Judgment in the lower court which application was dismissed on 22.8.2024.
10. The Respondents also submitted that the delay of 4 months has not been explained, he had a counsel who is well versed with court process .
11. The Applicant has not demonstrated that he has an arguable appeal for his attempt to produce fresh evidence during the review of the Judgment hearing was thwarted by the court and most likely he would not be allowed to produce such evidence on appeal.
12. The respondent further reminded the court that the lower court succession cause was filed in 1977 it took 47 years to reach the judgment of the lower court another delay is not equitable ,litigation has to come to an end.

Determination

13. The issue to determine is whether the applicant has met the threshold to warrant this court extend time .
14. The supreme court settled the principles that guide the exercise of discretion to extend time in case of *Nicholas Kiptoo Korir Arap Salat Versus IEBC* (2014) eKLR as follows:-
 - I. Extension of time is not a right to a party. It is an equitable remedy that is only to a deserving party at the discretion of the court.
 - II. A party who seeks extension of time has a burden of laying basis to the satisfaction of the court.
 - III. Whether the court should exercise its discretion for the delay, the delay should be explained to be made on a case-by-case basis.
 - IV. Where there is reasonable reason for the delay, the delay should be explained to the satisfaction of the court.
 - V. Whether there will be any prejudice suffered by the Respondent if extension is granted.
 - VI. Whether the application has been brought without undue delay.
 - VII. Whether in certain cases public interest should be a consideration for extension of time.
15. On the issue of the judgment was delivered on 22.5.2024, this application was filed 12.9.2024 approximately under 4 months .
16. There is not set number of days that may be considered as inordinate delay, each case is to be determined by its own circumstances .



17. In the case of *Andrew Kiplagat Chemaringo Versus Paul Kipkorir Kibet*
“ the law does not set out any minimum period of delay. All it states is that any delay should be satisfactorily explained as plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of favour. There was to be valid and clear reasons, upon which discretion can be favourably exercisable.”
18. The Applicant says that there was lapse of communication between him and his advocates that is why it took time for him to instruct them to lodge an appeal because of old age and financial constraints.
19. I will agree with the applicant it needs finances to lodge and sustain a legal battle and given his old age, if I am to go by his affidavit it could have been a challenge to raise finances in good time to lodge the appeal. I therefore find that delay is explained to my satisfaction.
20. This matter started in 1977 it has been in court all through, it is in everyone’s interest that the issues litigated upon are resolved by the highest court possible for the matter to rest once and for all. Therefore I find there is no prejudice which will be occasioned to the Respondent if the Applicant is allowed a chance to file the Appeal out of time for the decision to be arrived by the higher court may rest the issues permanently enabling the parties to move on with their lives.
21. On whether the appeal is arguable or not, I will say it is neither here nor there for no party bothered to attach a copy of the judgment on its pleadings.
22. In nutshell from the above analysis, I am persuaded to exercise my discretion in favour of the Applicant and I will let him exercise his constitutional right of appeal by allowing the application.
23. The Applicant is given 14 days to file the appeal and serve the Respondent failure of which the leave will automatically lapse.
24. Costs in cause.
25. Mention on 28.5.2025 for further directions.
26. Right of appeal 30 days explained.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 12TH DAY OF MAY, 2025

S.N MBUNGI

JUDGE

In the presence of :

Court Assistant – Albright Sunguti

Published online this 12th day of May, 2025 , parties absent though aware of the ruling date.

