



REPUBLIC OF KENYA



**In re Estate of Francis Maina Karaibu (Deceased) (Succession Cause  
2484 of 2007) [2025] KEHC 9984 (KLR) (Family) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9984 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**

**SUCCESSION CAUSE 2484 OF 2007**

**PM NYAUNDI, J**

**JULY 10, 2025**

**IN THE MATTER OF THE ESTATE OF FRANCIS MAINA  
KARAIBU (DECEASED)**

**BETWEEN**

**JECINTER WAITHIEGENI WACHIRA ..... 1<sup>ST</sup> APPLICANT**

**PURITY NJERI MAINA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**CHARITY MAUREEN MUMBI MAINA ..... RESPONDENT**

**RULING**

1. Vide an application dated 18<sup>th</sup> November 2024, Jecinter Waithiegeni Wachira (the 1<sup>st</sup> applicant) seeks the following orders;
  - a. Spent.
  - b. That time be extended to file Notice of Appeal within such prescribed time as this Honourable court finds fit and just to grant.
  - c. Spent.
  - d. Costs of and incidental to this application abide the result of the intended appeal.
2. The application is supported by the Affidavit of even date.
3. In her sworn affidavit, she deposes that her advocates learnt on 31<sup>st</sup> October 2023 that judgment had been delivered by this court on 21<sup>st</sup> July 2023. She argued that she is dissatisfied with the judgment of this court and intends to file an appeal. She asked this court to enlarge time to allow her file a notice



of appeal. She argued that she has an arguable appeal with high chance of success. That the applicant will not suffer any prejudice if the application is allowed.

4. The Respondent opposed the application vide a Replying Affidavit sworn on 30<sup>th</sup> April 2025. She avers that at the close of the hearing giving rise to the judgment herein, parties were directed to file submissions and both parties appeared before court on 12<sup>th</sup> June 2023. The applicants were yet to file submissions and at their request court extended time to allow them to file submissions and directed that the matter be mentioned on 28<sup>th</sup> June 2023 to take a judgment date.
5. On 28<sup>th</sup> June 2023, the Court in the presence of the respondent's counsel directed that the judgment would be delivered on 21<sup>st</sup> July 2023. The Judgment was delivered in the presence of the respondent's counsel and matter slated for mention on 31<sup>st</sup> October 2023 for mention to confirm compliance.
6. Her advocates served the applicants advocate with a mention notice of 31<sup>st</sup> October 2023. They had not filed a supplementary affidavit as directed by the court. On her part, she had filed and served an affidavit of protest dated 30<sup>th</sup> October 2023. That the applicants were aware of the judgment of this court but did not file an application to set aside the judgment or to appeal against it. She argued that the applicants have waited over a period of one year to file the current application which is an abuse of the court process.
7. She averred that the court ordered that the summons for confirmation of grant be heard on 16<sup>th</sup> April 2024. The court was not sitting and the matter was adjourned severally. A day before the hearing of the summons for confirmation of grant, the Applicants then filed the current application. She argues that the application is an afterthought, is made in bad faith and is meant to delay the process of confirmation of grant. That the applicants are benefiting from the deceased's estate to her exclusion. She urged the court to dismiss the application for enlargement of time to file an appeal and set down the summons for confirmation of grant.

#### **Applicants Submissions.**

8. The applicants reiterated the facts in their supporting affidavit hence there is no need to reproduce them.

#### **Respondent's Submissions.**

9. The Respondent submitted that the applicants were aware of the judgment day; they attended court severally before the judgment day and were even present in court when the judgment date was given.
10. She urged the court not to allow the application for enlargement of time. She relied on the decisions of *United Arab Emirates v Abdelghafar & others* 1995 IRLR 243 and *Salat vs Independent Electoral and Boundaries Commission & 7 others* (Application 16 of 2014) [2014] KESC 12 (KLR) (4 July 2014) which lay the principles for enlargement of time as follows;

“In the light of the guidance contained in these authorities it is possible to state, with reasonable precision, the principles which govern the exercise of the Appeal Tribunal's discretion to extend time and to identify those factors regarded as relevant. The grant or refusal of an extension of time is a matter of judicial discretion to be exercised, not subjectively or at whim or by rigid rule of thumb, but in a principled manner in accordance with reason and justice. The exercise of the discretion is a matter of weighing and balancing all the relevant factors which appear from the material before the Appeal Tribunal. The



result of an exercise of a discretion is not dictated by any set factor. Discretions are not packaged, programmed responses.”

11. She further sought to rely on the decisions of *First American Bank of Kenya Ltd vs. Gulab P Shah & 2 Others Nairobi (Milimani) HCCC NO. 2255 of 2000 [2002] 1 EA 65* which sets out the grounds for allowing an application for extension of time. It was her submission that the delay over one year after the judgment was delivered is inordinate and they have not given sufficient reason for their delay. That dissatisfaction with the judgment and decree of this court does not amount to sufficient reason for delay.

### **Analysis and Determination.**

12. The main issue for determination is whether the prayer for granting of extension of time to file the Notice of Appeal is merited.
13. The Supreme Court settled the principles that guide in the exercise of discretion to extend time in the case of *Nicholas Kiptoo Korir Arap Salat v IEBC [2014] eKLR* as follows:
  - i. Extension of time is not a right to a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court.
  - ii. A party who seeks extension of time has the burden of laying basis to the satisfaction of the court.
  - iii. Whether the court should exercise its discretion to extend time is a consideration 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.
14. The applicants deposed that they were not aware of the judgment date. They argue that when the matter came up for mention on 31<sup>st</sup> October 2023 is when they realized that judgment had been delivered in their absence. The Respondent on the other hand argues that the Applicants were aware of the judgment date because the date was given in court and they were present.
15. I have gone through the proceedings of this court. On 12<sup>th</sup> June 2023, the matter came up for mention to confirm whether the parties had filed their written submissions. Counsel for the applicants requested for fourteen days to put in their written submissions. I therefore indicated that the matter would be further mentioned on 28<sup>th</sup> June 2023. When the matter came up for mention, the applicants advocate was not in court. I gave a date for the ruling. When the applicant’s advocates were served with a mention notice for 31<sup>st</sup> October 2023, they indicated to the court that they were not aware that the court delivered a ruling. They did not seek an application for stay, neither did they indicate to the court that they intended to file an appeal. Parties proceeded with the application for protest only for the applicants to file an application to enlarge time on 18<sup>th</sup> November 2024. No reason has been given why the application was filed over a period of one year since the ruling was delivered.
16. Whereas parties have a right to be heard this right is balanced against the opposing parties right to have a quick conclusion of the matter. It is for this very reason that the Judiciary has implemented the e- filing



system enabling parties to have real time access to their files. The judgment herein was uploaded to the portal on the same date that it was delivered. I am aware that the system alerts counsel and the parties of any activity. In any event the delay between 31<sup>st</sup> October 2023 and the filing of this application is not explained.

17. It is not enough for the party to state that they are dissatisfied with the judgment it was necessary to demonstrate that they were not indolent at all. Equity will assist the diligent.
18. I have meticulously considered the present application and I am not satisfied that the applicants have provided valid reasons to warrant the extension of time to file the appeal. Therefore, I dismiss the application in its entirety and award costs to the respondent assessed at Kshs 30000 payable within 30 days
19. The Summons for confirmation will proceed to hearing on 3<sup>rd</sup> March 2026
20. Parties at liberty to exercise right of appeal within 30 days.

It is so ordered.

**SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 10<sup>th</sup> DAY OF JULY, 2025.**

**P. M NYAUNDI**

**HIGH COURT JUDGE**

In the presence of:

Ms. Nyabuta holding brief for Ms. Kogai for Respondent

Fardosa Court Assistant

