



In re Estate of the Late Elizabeth Wairimu Waiyaki (Deceased) (Succession Cause 94 of 2017) [2024] KEHC 2512 (KLR) (Family) (7 March 2024) (Ruling)

Neutral citation: [2024] KEHC 2512 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 94 OF 2017
HK CHEMITEI, J
MARCH 7, 2024**

BETWEEN

**EUNICE WAMAITHA WAIYAKI 1ST APPLICANT
ELIZABETH WAIRIMU 2ND APPLICANT
ROSALYNE WANJIKU 3RD APPLICANT**

AND

**LEWIS WILKINSON KIMANI WAIYAKI 1ST RESPONDENT
PETER GICHUHI WAIYAKI 2ND RESPONDENT
TIRAS BARAE WAIYAKI 3RD RESPONDENT**

RULING

1. The Chamber summons application dated October 27, 2021 by the applicants seeks the following orders:-
 - (a) That this court be pleased to extent time for the applicants to file the present application for leave to appeal against the judgement delivered in this matter on October 15, 2020.
 - (b) That this court be pleased to grant leave to prefer an appeal to the Court of Appeal against the judgement in this matter on October 15, 2020.
 - (c) This this court be pleased to extend time and grant leave for the Applicants to file Notice of Appeal and record of appeal against the whole decision delivered by the Honourable Lady Justice Ali Aroni on October 15, 2020 out of time.
 - (d) That costs be provided for.



2. The application is based on the grounds thereof and the sworn affidavit of Tiras Barae Waiyaki dated even date.
3. The Applicants depose that judgement in this matter was to be delivered on September 24, 2020 but was later postponed to October 8, 2020 and later November 15, 2020.
4. That unknown to them and their advocate the Deputy Registrar of this court advised them that the judgement would be delivered on notice as the court was not sitting. However, to their surprise judgement was delivered on the October 15, 2020 contrary to what they had been informed.
5. He went on to state that he only got to know on October 30, 2020 through perusal of the Kenya Law website that the said judgement had been delivered. It was therefore too late for them to file their appeal to the Court of Appeal because of the statutory limitations of 14 days and the need to seek the leave of this court.
6. The Applicants therefore pray that the intended appeal is indeed meritorious and that they should be allowed to pursue it as per the draft memorandum of appeal attached.
7. The Respondents vide the replying affidavit of Eunice Wamaitha Waiyaki have opposed the application arguing that the same has been brought inordinately late without any plausible reason. That the Applicants having learned of the judgement on October 30, 2020 ought not to have waited one year later to bring this application.
8. Secondly she deponed that the applicants served them with the application seven months after filing and after being prompted by the court and this smug bad faith on the part of the Applicants.
9. In the premises the respondents pray that the application be denied and the estate be allowed to proceed as per the judgement of this court.
10. The parties were directed to file written submissions which they have complied. The said submissions essentially gravitate over the issue raised in the rival affidavits.

Analysis and determination

4. I think the main issue as captured by the parties in their submissions mentioned above is whether there was inordinate delay on the part of the Applicants in filing this application.
5. What is not as such disputed is the fact that the court may have delivered its judgement on October 15, 2020 as per the applicant's contention. The Applicants admitted that they learned of the same through Kenya Law website on October 30, 2020. This was essentially two weeks after the delivery.
6. The Applicants from the supporting affidavit did nothing from there till the filing of the application almost one year after October 30, 2020. They have not given any explanation for the delay.
7. It is true that there is no automatic appeal in probate matters to the Court of Appeal. Leave must be sought at least within 14 days after service or for that matter directly after delivery of the decision. See *Rhoda Wairimu Karanja & another v Mary Wangui Karanja & another* [2014] eKLR.
8. In this case the Applicants got to know that judgement had been delivered 15 days later. They waited after 12 months to file this application without any plausible reason. I think this is what is referred to as "inordinate delay".
9. It is always not the practice of the courts to chase away litigants from the coveted seat or altar of justice. However, in this case the applicants chased themselves. The legal maxim, "litigation must come to an end" and "he who comes to equity must come with clean hands" apply here squarely. It is not right



to hold the respondents and indeed the other beneficiaries of the estate in limbo through filing of frivolous and afterthought applications as the case herein.

10. Moreover, the Applicants have not denied that they served the Respondents with these application seven months after filing and after being directed by the court.
11. I think I have said much to show that I do not find merit in the application and the same is hereby dismissed with costs.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 7TH MARCH 2024.

H K CHEMITEI

JUDGE.

