



In re Estate of Jacob Odindo - Deceased (Family Miscellaneous Application E004 of 2024) [2024] KEHC 7360 (KLR) (19 June 2024) (Ruling)

Neutral citation: [2024] KEHC 7360 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
FAMILY MISCELLANEOUS APPLICATION E004 OF 2024**

**KW KIARIE, J
JUNE 19, 2024**

BETWEEN

JOAB OTIENO OUMA APPLICANT

AND

DANIEL OKELLO NGONGO 1ST RESPONDENT

JOSHUA ODHIAMBO NGONGO 2ND RESPONDENT

PAUL ODHIAMBO MUGA 3RD RESPONDENT

RULING

1. Joab Otieno Ouma, the applicant herein, moved the court through a Notice of Motion dated the 4th day of April 2024. The application is brought under sections 3A & 79G of the *Civil Procedure Act* and Order 40 of the *Civil Procedure Rules*. He is seeking the following orders:
 - a. The honourable court will be pleased to grant an Interim Order of Stay of proceedings vide Ndhiwa Succession Cause NO.72 of 2018, pending the hearing and determination of the instant application. This is the first order being sought.
 - b. That the honourable court be pleased to grant an order of stay of proceedings, vide Ndhiwa Success cause No. 72 of 2018, pending the hearing and determination of the intended appeal.
 - c. That the honourable court, recognizing the gravity of the situation, be pleased to grant leave to the applicant herein to file and/or mount an appeal out of the statutory period against the ruling and/or Ndhiwa Succession Cause NO.72 of 2018, whereby the honourable court(sic) in allowing the applicant's application dated the 30th day of July 2018 went ahead and recognized that the petitioners/respondents herein as beneficiaries of the estate of the deceased which is erroneous and misconstrued facts. Failure to do so may result in a miscarriage of justice.



- d. That such further and/or other orders be made as the court, whose wisdom and judgment are highly respected, may deem fit and expedient.
 - e. That the costs of this application be provided for.
2. The application is premised on the following grounds:
- a. That this honourable court issued a ruling dated the 8th day of October 2018, vide Ndhiwa Succession Cause No. 72 of 2018, where he recognized the applicant herein as a beneficiary of the deceased's estate. This is a crucial ground for the application.
 - b. That in the said ruling further directed that the grant shall be moved in the joint name of the petitioners/respondents together with the applicant herein, which direction the applicant was not in agreement with as the respondents/petitioner herein are not the direct beneficiaries of the deceased herein.
 - c. This application's origins trace back to the applicant's grandfather, Odindo, who was married to Okoko, his only wife. However, upon his death, his brother Obel inherited Okoko's wife as a third wife.
 - d. That at the time of his death, the deceased herein was the registered owner of the suit parcel known as Kabuoch/K/K/Koguta/1528 and therefore, the property ought to devolve to his surviving wife or his surviving children; hence the petitioners herein are not the direct beneficiaries of the estate of the deceased.
 - e. The deceased's estate herein should devolve to its beneficiaries, the applicant.
 - f. That nevertheless, instead of appealing the ruling, the applicant proceeded to file a myriad of applications before the trial court as he was acting in person and did not know the best procedure to protect his rights in the deceased's estate.
 - g. That by the time the applicant appointed an advocate to represent his interest, sufficient time had passed. Hence, he could only obtain legal advice from his advocates on the most recent application, which resulted in the withdrawal of his application on the 22nd day of November, 2023.
 - h. That the matter herein is set out for confirmation on the 10th day of April 2024 before the trial court, and the applicant is apprehensive that he stands to lose his father's property to strangers who claim to have an interest in the estate of the deceased herein.
 - i. That, furthermore, parties herein have been unable to agree on the distribution mode simply because the respondents herein are not regarded as beneficiaries of the deceased's estate.
 - j. Additionally, the applicants herein are not so forthcoming towards the distribution of the deceased's estate to the extent that at one point, the petitioners/respondents were declared intermeddlers as per section 45 of the [law of succession act](#). Still, they remain the administrators of the estate of the deceased.
 - k. Based on the aforementioned discussion, it is crystal clear that the applicant herein is dissatisfied with the ruling. Therefore, he wishes to appeal against the trial court ruling delivered on the 8th day of October 2018, but the permitted time has lapsed.



- l. That the delay in filing the appeal was not intentional but was because the applicant was representing himself in the court of law and did not understand the proper procedure to undertake at that time.
 - m. That the inaction and/or omission to file the appeal within the specified time was not intentional and thereby wishes the court to exercise its discretion in extending time to file an appeal out of the stipulated time.
 - n. That the applicant contends that his intended appeal is arguable and meritorious and will, therefore, be rendered nugatory if a stay of execution is not granted.
3. The application was served to the respondent through oyoo.wakili@gmail.com, but no response or submissions were filed.
 4. Section 79G of the *Civil Procedure Act* provides for extension of time to appeal as follows:

Every appeal from a subordinate court to the High Court shall be filed within thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order:

Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.
 5. The order sought by the applicant is discretionary, and the court must be satisfied that it is merited. The Supreme Court of Kenya, in the case of *County Executive of Kisumu v County Government of Kisumu & 8 others [2017]* eKLR said:

Each case has to be determined on its own merit and all relevant circumstances considered. It is worth reiterating that in considering whether or not to extend time, the whole period of delay should be stated and explained to the satisfaction of the court.
 6. I am aware that care must be taken in succession matters to avoid instances where a deserving party is not disinherited. However, the applicant was aware of the ruling but chose not to act within the prescribed timelines. He has not, therefore, demonstrated to the satisfaction of this court why there was a delay from the 8th day of October 2018 to the 4th day of April 2024 when this application was filed. This is five years and three months.
 7. The application is therefore dismissed with costs for want of merits.

DELIVERED AND SIGNED AT HOMA BAY THIS 19TH DAY OF JUNE 2024

KIARIE WAWERU KIARIE

JUDGE

