



REPUBLIC OF KENYA



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In re Estate of John Njoroge Macharia (Deceased) (Succession Cause 816 of 2012) [2024] KEHC 9578 (KLR) (7 August 2024) (Judgment)

Neutral citation: [2024] KEHC 9578 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
SUCCESSION CAUSE 816 OF 2012**

SN RIECHI, J

AUGUST 7, 2024

IN THE MATTER OF THE ESTATE OF JOHN NJOROGE MACHARIA (DECEASED)

BETWEEN

JANE MWIHAKI NJOROGE APPLICANT

AND

FELIX MACHARIA NJOROGE 1ST RESPONDENT

MELISSA MURUGI NJOROGE 2ND RESPONDENT

JUDGMENT

1. The deceased John Njoroge Macharia died on 4.11.2021. The estate has not been distributed due to the disputes between the beneficiaries to the estate. By summons dated 23.4.2018 Felix Macharia Njoroge and Melissa Murugi Njoroge (as next friend of Mary Wanjiku Njuguna) sought against Jane Mwhaki Njoroge certain declarations.
2. By Ruling dated July 16, 2018 Onyiego J. Ordered.
 1. That a declaration order is hereby issued that the Applicants Felix Macharia Njoroge and Melissa Murugi Njoroge are children of the deceased John Njoroge Macharia.
 2. That a declaration order is hereby issued that the Applicants Felix Macharia Njoroge and Melissa Murugi Njoroge are entitled to a share in the estate of the deceased John Njoroge Macharia.
3. Jane Mwhaki Njoroge filed application dated 10.12.2018 seeking the following orders:
 1. That this court be pleased to review the ruling of the court given on 16th July 2018.
 2. That this court do grant orders for setting aside of the said ruling and an order for fresh hearing of the application dated 23rd April 2018.



3. That the orders granted on the 16th of July 2016 be stayed pending the hearing and determination of the application.
4. By Order of this Court dated 14.3.2023 this Court declined to review or set aside the orders and dismissed the application. Jane Mwihaki Njoroge the applicant filed this Notice of Motion dated 22.5.2023 seeking the following orders:
 1. That service of this application be dispensed with in the first Instance and the application be heard as a matter of urgency.
 2. That the Honourable Court do grant the Applicant leave to file an appeal out of time pursuant to the Ruling delivered on 16th July, 2018.
 3. That the Notice of Appeal annexed hereto be deemed as duly filed and served.
 4. That the Honorable be pleased to stay the execution of the Ruling delivered on July 2013 pending the hearing and determination of this application.
 5. That the Honorable Court be pleased to stay the execution of the Ruling delivered on July pending the hearing and determination of the Applicant's intended appeal.
 6. That the costs of this application be provided for.
5. The grounds for the application are that the applicant was not involved in the application leading to the decision by Onyiego J dated 16.7.2018, that she is dissatisfied with the Ruling, that the litigant should not suffer due to mistake of Counsel and that she has an arguable appeal. Finally, the applicant avers that she has made this application without delay. The applicant filed a Supporting affidavit where she reiterates the grounds of the application.
6. Mr. Ochwa for the Respondent filed grounds of opposition to the application. Respondent opposes the application on the grounds that the applicant filed an application for review of the same orders which was dismissed; that there has been inordinate delay in filing the application and that this application is an abuse of the Court Process.
7. By Consent this application was canvassed by way of Written submissions. Both Counsel filed their respective submissions. Mr. Moturi for the applicant in his submission gave the history of the disputes between the parties. He submitted that there are 2 succession files running.- Succession No. 1917 of 1996 the Estate of Daniel Macharia Njoroge (deceased) and Succession No. 816 of 2012 the estate of John Njoroge Macharia (deceased) which is the present file. John Njoroge Macharia (Deceased) in this file is the son of Daniel Macharia Njoroge deceased in 1917 of 1996. The applicant Jane Mwihaki is an administrator in the estate of Daniel Macharia Njoroge – the father in law and also the administrator of the estate of John Njoroge Macharia her husband. He submitted that there was confusion as respondents filed similar applications in the two files and that when decision was made, it was not conveyed by her then advocate. He submits that the mistake of the advocate should not be visited upon the litigant.
8. Mr. Ochwa for the Respondents submits that the application is misconceived as leave to file appeal has not been sought. Counsel further submits that the applicant having sought review of the ruling dated 16.7.2018 which was dismissed, she cannot appeal against same ruling.
9. I have considered the application and submissions. It appears clear to me that the applicant and respondents are having disputes in two different files and that may have explained the confusion exhibited by Counsel. The applicant's contention is that she is dissatisfied with the ruling by Onyiego J



declaring the respondents as beneficiaries in the estate of John Njoroge Macharia and wishes to appeal. I hereby direct as follows:

1. The applicant is hereby granted leave to appeal.
2. The time of appeal is hereby extended for 30 days
3. The appellant to file appeal within 30 days of this order in default the leave will be expire on the 31st day.
4. Each party to bear his own costs.

DATED AT NAIROBI THIS 7TH DAY OF AUGUST 2024.

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S. N. RIECHI

JUDGE

