



**In re Estate of Javan Mahugu Munyiri (Deceased) (Succession Cause  
238 of 1999) [2024] KEHC 12606 (KLR) (14 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12606 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
SUCCESSION CAUSE 238 OF 1999  
DKN MAGARE, J  
OCTOBER 14, 2024**

**IN THE MATTER OF THE ESTATE OF JAVAN MAHUGU MUNYIRI (DECEASED)**

**BETWEEN**

**ANNA NYAICUGA MAHUGU ..... PETITIONER**

**AND**

**AMOS MURAGE MAHUGU ..... 1<sup>ST</sup> RESPONDENT**

**SAMUEL MWANGI MAHUGU ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This is a ruling over 2 applications. The application dated 27/2/2024 is by the Petitioner and the application dated 11/12/2023 by the Respondents.
2. The brief history of this matter as can be discerned from the pleadings is that the Petitioner, as sole administrator obtained the Grant of Letters of Administration which was confirmed on 27/6/2003.
3. *Vide* the Summons General dated 11/12/2023, the Respondents applied seeking the Petitioner to show cause why she had refused to distribute the estate and substitute the deceased beneficiaries.
4. The Petitioner also filed an application dated 27/2/2024 seeking leave to appeal out of time by lodging appeal against the Judgment delivered by this Court on 27/6/2003 that led to the confirmed grant.

**Analysis**

5. The court will first establish whether the Petitioner has satisfied the conditions based on which to enlarge time for appeal. If this issue is merited, then I will consider whether or not to stay the execution of the Judgment dated 27/6/2003.



6. Waki, JA in *Seventh Day Adventist Church East Africa Ltd. & Another v M/S Masosa Construction Company* Civil Application No. Nai. 349 of 2005 held that:

“As the discretion to extend time is unfettered, there is no limit to the number of factors the Court would consider so long as they are relevant; the period of delay, (possibly) the chances of the appeal succeeding if the application is granted, the degree of prejudice to the Respondent if the application is granted, the effect of the delay on public administration, the importance of compliance with the time limits, the resources of the parties, whether the matter raises issues of public importance are all relevant but not exhaustive factors...In an application for extension of time, each case must be decided on its own peculiar facts and circumstances and it is neither feasible nor reasonable to lay down a rigid yardstick for measuring periods of delay as explanations for such delays are as many and varied as the cases themselves...The ruling striking out the appeal is not only necessary for exhibiting to the application for extension of time but also for consultations between the applicant’s counsel and their clients and the fact that the ruling was returned to Nairobi for corrections is a reasonable explanation for the delay... Where the Respondent has already recovered all the decretal sum and costs attendant to the litigation, the right of appeal being a strong right which is rivalled only to the right to enjoy the fruits of judgement, no prejudice would be caused to the respondent who has enjoyed his rights in full if an opportunity is given to the applicants to enjoy theirs too, even if it is on a matter of principle.”

7. I have perused the reasons for the delay in the application and the Supporting Affidavit filed both by the Advocate Stella Kyengo and the Petitioner. The Applicant states that there was delay due to her ill health that suppressed her financial resources and made her unable to lodge the appeal in time and that the intended appeal was meritorious.
8. On the other hand, the Respondents vide their replying affidavit dated 11/6/2024 opposed the application on the ground that the application was an afterthought only prompted by the Respondent’s Summons General dated 11/12/2023 that sought to bring the Petitioner to account for failure to distribute the property more than 20 years after the confirmation of the grant. It was deposed that the Petitioner had not satisfied grounds upon which this court would exercise discretion to enlarge appeal time as the grounds of appeal were not attached.
9. The extension of time for appeal is out of doubt an exercise of discretion. In the Supreme Court’s Decision (M.K. Ibrahim & S.C. Wanjala SCJJ) in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR held as doth:-

- “(1) Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court.
- (2) A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court.
- (3) Whether the Court should exercise the discretion to extend time, is a consideration to be made on a case to case basis.
- (4) Whether there is reasonable reason for the delay. The delay should be explained to the satisfaction of the court.



10. Similarly, in *Dilpack Kenya Limited v William Muthama Kitonyi* [2018] eKLR Odunga J observed that:-

“In an application for extension of time, where the Court is being asked to exercise discretion, there must be some material before the Court to enable its discretion to be so exercised. Once there is non-compliance, the burden is upon the party seeking indulgence to satisfy the court why the discretion should nevertheless be exercised in his favour and the rule is that where there is no explanation, there shall be no indulgence. See *Ratman v Cumarasamy* [1964] 3 All ER 933; *Savill v Southend Health Authority* [1995] 1 WLR 1254 at 1259.

11. I note that as the judgment was delivered on 27/6/2003, the appeal to this Court should have been filed by 10/7/2003. This application was filed on 28/2/2024 and the Notice of Appeal was lodged on 27/2/2024. The court notes that there was an earlier notice of appeal dated 21/7/2003. Though filed late, the same must have lapsed due to failure of filing the Record of Appeal.

12. There is a delay of 20 years and 4 months after the delivery of the impugned judgment. The Applicant was under duty to show the reasons for delay. However short or long the period of delay, it must be explained. In *Alfred Iduvagwa Savatia v Nandi Tea Estate & another* [2018] eKLR J. Mohammed JA. cited Aganyanya, JA in *Monica Malel & Another V. R.*, Eldoret Civil Application No. Nai 246 of 2008 the learned Judge stated:-

“When a reason is proposed to show why there was a delay in filing an appeal it must be specific and not based on guess work as counsel for the applicants appears to show .... the applicants are not quite sure of why the delay in filing the notice of appeal within the prescribed period occurred, which amounts to saying that no valid reason has been offered for such delay.”

13. Further, Section 79 G of the *Civil Procedure Act* provides as doth: -

Every appeal from a subordinate court to the High Court shall be filed within a period of 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.

14. Therefore in my view, without a valid reason, this court has no jurisdiction to extend time. It is not manna to dish out. It is exercise of discretion. Unless the court is properly moved, it has no power to exercise discretion. It is not by whim but through judicious consideration that such an application is considered.

15. The factors to consider in dealing with such an application are: -

- a. The length of delay.
- b. The reason for delay.
- c. The animus of the applicant.
- d. The prejudice to the Respondent.

16. The Applicant has not explained the delay. How ill health could keep her out of action for more than 20 years is a mystery known to herself. It is my considered opinion that the 4 factors above are



sequential. Therefore, one must fulfil each as you move to the next. If the delay is inordinate, it may not be necessary to go to the reason for delay. When the delay is reasonable, there must be a real and genuine reason for delay. In this case. The Petitioner has failed in all the parameters and indeed prejudice to the Respondents would be insurmountable if leave were to be granted to lodge appeal more than 20 years after Judgment, without a succinct explanation for delay. The object of this court is to do justice to both parties. In *Harris Horn Senior, Harris Horn Junior v Vijay Morjaria* Nyeri Civil Appeal No. 223 of 2007 when confronted with similar arguments, the Court made observations therein *inter alia* as follows:

(32) As for the need to do justice to the parties before it, we have no doubt that this is the core business of the Court. However, a court of law cannot ignore principles of substantive law or case law governing the particular aspect of justice sought from its seat. Its primary role is to ensure that the justice handed out is kept anchored on both the law and the facts of each case.”

17. Therefore, the court can then exercise discretion one way or another. The court cannot find that the delay is inexcusable, inordinate and no reason is given and then, out of sheer whims and fiat, extend time. That makes litigation unpredictable and unending.
18. In our court system, delay is usually documented. Without documentation, it never happened. For example, a lost file where there is no record of follow up, is not lost. When applying for proceedings, there must first be as of necessity, a letter bespeaking the proceedings and payment of deposit. Without such, proceedings were never requested. The *raison d'être* for payment is to enable the court prioritize according to payment and only serious applicants for proceedings. Without payment, there are no proceedings being sought. Further, proceedings must be formally sought, even where the same were requested for in court, the registry must be moved and follow ups be done.
19. In this matter, the reasons for the delay is doubtful and the length of delay is inordinate in the circumstances. There is also no expression of good faith in proposing to appeal after being served with the application to show cause why the Petitioner has not distributed the estate more than 20 years after obtaining the confirmed grant. Again, there is no basis for alleging that the intended appeal is arguable.
20. The application dated 27/2/2024 is thus not merited and I do not see any value for determining whether stay of the execution of the Judgment should issue.
21. On the Summons dated 11/12/2023, the Respondents seek an order against the Petitioner to show cause on two aspects:
  - a. Why she has not distributed the estate of the deceased as per the certificate of confirmed grant.
  - b. Why she has refused to substitute deceased beneficiaries.
22. In her response to the application dated 11/12/2023, the Petitioner filed undated replying affidavit in which it was stated in material that the delay in distributing the estate was due to lack of financial resources owing to her illnesses and that in any event she had also lodged a notice of appeal against the Judgment leading to the confirmed grant.
23. I have perused the rival documents filed in court and note that there has been effort to cause the Petitioner to perform her statutory duties but which she has failed to act. The duties and responsibilities of an Administrator are stipulated under Section 83 of the *Law of Succession Act* as follows:
  - a. To provide and pay, out of the estate of the deceased, the expenses of a reasonable funeral for him;



- b. To get in all free property of the deceased, including debts owing to him and moneys payable to his personal representatives by reason of his death;
  - c. To pay, out of the estate of the deceased, all expenses of obtaining their grant of representation, and all other reasonable expenses of administration (including estate duty, if any);
  - d. To ascertain and pay, out of the estate of the deceased, all his debts;
  - e. Within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
  - f. Within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
  - g. Subject to Section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be;
  - h. Within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration.
  - i. Produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
  - j. Complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration.
24. Therefore, under Section 83 of the *Laws of Succession Act*, the administrator in my view constitutes a high office in the administration of the estate of the deceased person and remains accountable to the Court, the beneficiaries and dependents of the deceased and who is expected to act in accordance with the grant irrespective of whether the administrator is also a beneficiary or has vested interest in the estate or a portion thereof.
25. In this case, there is evidence that a number of beneficiaries have since passed on and there is need to substitute them. The court has perused the Chief's letter dated 6/6/2023 stipulating the deceased's beneficiaries of the confirmed grant dated 27/6/2003 and their survivors. The Petitioner raised no objection on the letter. Instead, she wallowed into details that are of little use to her case. She stated that there were 4 beneficiaries who were provided for in the will but who were left out hence her hesitation to distribute the property.
26. As these are intestate proceedings, I do not find basis to be swayed into allegations of the existence of a will that has not been propounded for testate succession purposes or beneficiaries who have not been properly filed in court, in the absence of protests or objections to the confirmation of the grant. It also sends the genuineness of the Petitioner to a pitfall noting that she is the sole administrator and never filed to include the 4 purported beneficiaries before the confirmation of the grant and more than



- 20 years after the confirmation thereof. Where the 4 have erupted from is a mystery known to the Petitioner but who has kept it to herself for her own reasons.
27. Noting that the Petitioner is the sole administrator and the Respondents are her step sons, I have no doubt that the conduct of the Petitioner is oppressive of the interest of the Respondents and unless this court intervenes, the estate of the deceased is likely to remain undistributed for a longer time than the 20 years and 4 months that have now lapsed.
28. This court also observes that family rivalry and distrust is a normal trend among families in quest to establish their boundaries to their inheritance following the demise of deceased property holder. Factions grow among families with antagonistic forces among members of the same family and which are manifest in the thirst for keeping certain members of the family out of inheritance or within dismal ranges of mounts on the bounds of the estate.
29. What such parties forget is that inheritance is a matter of right and one cannot exclude the other. Even a parent cannot exclude their most detested child from inheritance as a matter of law unless all indications justify such exclusion. See *Re Sigsworth* (1935) in which the *English Administration of Justice Act 1925* was interpreted using the wider approach to not allow a son who murdered his own mother to inherit where no will was established as this would bring the absurd result for rewarding homicide.
30. Therefore, it is in the proper discretion of this court to allow the application by the Respondents and instill action on the part of the Petitioner. I do not think, fathom or encompass that the Petitioner will ever distribute. She is involved in a merry go round kind of permutations and reed dance with the estate. This is a proper matter for this court to exercise its inherent discretion.
31. A grant that has been admittedly not been administered for over 20 years is useless and inoperative. The Petitioner is singularly unqualified to effect a grant she is not comfortable with. There are other beneficiaries who can do this and even better.
32. Section 76 (d) and (e) of the [Law of Succession Act](#) provides as follows: -
- d. that the person to whom the grant was made has failed, after due notice and without reasonable cause either
    - i. to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
    - ii. to proceed diligently with the administration of the estate; or
    - iii. to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
  - (e) that the grant has become useless and inoperative through subsequent circumstances.”
33. The confirmed grant in the hands of the Respondent is useless. She has confirmed that she is unable to effect the same and attempted to file a notice of appeal over 20 years later.
34. The allegations of sickness are otiose. They have no bearing on the duty of the administrator. If indeed she is of ill health, which is not the case, the court ought to relieve her the burden of administration. In the circumstances, the grant as confirmed is revoked and the Respondent removed as an administrator. In lieu thereof, the Applicants are appointed as administrators. The new grant is confirmed in favour



of Samuel Mwangi Mahugu and Amos Murage Mahugu under terms given out in the grant confirmed on 27/6/2003.

35. The new administrators, Samuel Mwangi Mahugu and Amos Murage Mahugu should administer the estate and transmit by 14/4/2025. The now retired administrator, Anna Nyaicuga Mahugu, shall render just accounts covering the period from issuance of grant to 14/10/2024. The accounts must be filed in court and served on the administrators by close of business on 15/2/2025.
36. In respect of the estate of any person who is indicated as a beneficiary but is now deceased, the administrators shall sign the requisite documents to have the estates of any entitled beneficiaries registered in the names of the estates of those deceased persons. Should any party fail to sign, the Deputy Registrar of this court shall sign the requisite documents.

### **Determination**

37. The upshot of the foregoing is that I make the following orders:
  - a. The Application dated 27/2/2024 and filed by the Petitioner is devoid of merit and is hereby dismissed *in limine* with costs of Kshs. 15,000/= payable within 30 days.
  - b. The Summons General dated 11/12/2023 and filed by the Respondents is merited and is hereby allowed in the following terms:
    - i. The grant of representation issued to Anna Nyaicuga Mahugu and confirmed on 27/6/2003 is hereby revoked as the administratrix is unable and unwilling to administer the estate.
    - ii. In lieu thereof, the Applicants, Samuel Mwangi Mahugu and Amos Murage Mahugu are appointed as administrators. The grant is hereby confirmed in terms of the grant confirmed on 27/6/2003.
    - iii. The new administrators, Samuel Mwangi Mahugu and Amos Murage Mahugu should administer the estate and transmit by 14/4/2025.
    - iv. The now retired administrator, Anna Nyaicuga Mahugu, shall render just accounts covering the period from issuance of grant to 14/10/2024. The accounts must be filed in court and served on the administrators by close of business on 15/2/2025.
    - v. In respect of the estate of any person who is indicated as a beneficiary, but is now deceased, the administrators shall sign the requisite documents to have the estates of any entitled beneficiaries registered in the names of the estates of those deceased persons.
    - vi. Should any party fail to sign transmission documents, the Deputy Registrar of this court shall sign the requisite documents.
  - c. The Respondent shall bear costs of Kshs. 20,000/= in respect of the Summons General dated 11/12/2023.
  - d. The file is closed.

**DELIVERED, DATED AND SIGNED AT NYERI ON THIS 14<sup>TH</sup> DAY OF OCTOBER, 2024.  
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**KIZITO MAGARE**



## **JUDGE**

### **In the presence of:-**

Stella Kyengo for the Petitioner

Mr. Muchiri Wa Gathoni for the Respondents

Court Assistant – Jedidah

