



**In re Estate of Gaitho Kimani (Deceased) (Succession Cause
75 of 2019) [2023] KEHC 1910 (KLR) (10 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 1910 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
SUCCESSION CAUSE 75 OF 2019
MM KASANGO, J
MARCH 10, 2023
IN THE MATTER OF THE ESTATE OF GAITHO KIMANI (DECEASED)**

RULING

1. On May 13, 2021, I delivered on behalf of Justice C Meoli a ruling in this matter. A notice of motion dated September 13, 2021 seeks leave of this court to lodge an appeal against that ruling. An appeal in succession cause from High Court decision can only be with the leave of the court this is what was stated in the case *In re Estate of Joel Thaaara Ruria* (2022) eKLR.

“Rhoda Wairimu Karanja & another v Mary Wangui Karanja & another [2014 eKLR made the following observations with regards to appeals in succession matters against the decisions of the High Court exercising its original jurisdiction:-

‘We think we have said enough to demonstrate that under the Law of Succession Act, there is no express automatic right of appeal to the Court of Appeal; that an appeal will lie to the Court of Appeal from the decision of the High Court exercising original jurisdiction with leave of the High Court or where the application for leave is refused, with leave of this court. Leave to appeal will normally be granted where *prima facie* it appears that there are grounds which merits serious consideration. We think this is good practice that ought to be retained in order to promote finality and expedition in the determination of probate and administration disputes.’”

2. The application is made by Mbugua Gaitho. In his affidavit in support of the application, Mbugua deponed that he was aggrieved by the ruling and he therefore instructed his advocate to file an appeal. Although he stated in that affidavit that a notice of appeal and a letter requesting for the proceedings



was annexed to the affidavit, in fact no such document was attached. This indeed led the respondent to the application that is, Margaret Wanjiru to depone that:-

“That the content of paragraph number 2 are untrue and no evidence has been tendered in support of the same and if anything, no annexure is attached to the application.”

3. With the above in mind, the applicant was required to explain the delay from the date when the ruling was delivered, May 13, 2021 upto the date he sought leave to appeal, that is, September 13, 2021. In the Supreme Court case of *Nicolas Kiptoo Arap Korir Salat v Independent Electoral And Boundarie Commission & 7 others* SC App No 16 of 2014 (2015) eKLR it was held amongst others that the applicant who seeks leave to appeal out of time must explain the reason for the delay; and leave to appeal is only granted to a deserving party.
4. The applicant herein not only has failed to prove he filed a notice of appeal but also has failed to explain, to the satisfaction of this court, the reason for delay. He is in my view not deserving in this court exercising its discretion in his favour. The inevitable conclusion that this court reaches is that the application is unmerited. Accordingly, the notice of motion dated September 13, 2021 is dismissed with costs.

RULING DATED AND DELIVERED AT KIAMBU THIS 10TH DAY OF MARCH, 2023.

MARY KASANGO

JUDGE

Coram:

Court Assistant : Julia

Instructed by J.M. Njenga Advocates

for Mbugua Gaitho:- Miss Kimani

Instructed by Gachoka & Co. Advocates

for Margaret Wanjiru:- Mr. Gachoka

COURT

Ruling delivered virtually.

MARY KASANGO

JUDGE

