



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 1572 OF 2006**

**IN THE MATTER OF THE ESTATE OF SAMSON KAMAU WAITHAKA (DECEASED)**

**ALICE MUMBI KAMAU.....APPLICANT**

**VERSUS**

**HANNAH NYAMBURA KAMAU.....1<sup>ST</sup> RESPONDENT**

**SULEIMAN MBUGUA KAMAU.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. On 28<sup>th</sup> September 2020 this court indicated that the ruling in respect of the applicant's application dated 28<sup>th</sup> February 2019 seeking leave to appeal against the decision of the court dated 24<sup>th</sup> October 2018 out of time would be delivered on 27<sup>th</sup> October 2020. The decision dated 24<sup>th</sup> October 2018 had dismissed the applicant's application seeking the revocation of the grant that had been issued to the respondents on 16<sup>th</sup> October 2006, and confirmed on 13<sup>th</sup> November 2007. The grant related to the estate of the deceased Samson Kamau Waitthaka who had died intestate on 18<sup>th</sup> May 2004.

2. On 27<sup>th</sup> October 2020 this court sent a copy of the ruling it had prepared to the parties through the email address of the respective advocates. The ruling was delivered electronically. In the ruling, the court extended the time to appeal by 14 days. The court stayed the execution of the certificate of confirmation for 90 days to enable the applicant to proceed to the Court of Appeal to seek stay of execution.

3. The applicant states that she did not act on the directions in the ruling of 27<sup>th</sup> October 2020 because she did not know it had been delivered. She attributed the lack of knowledge to the fact that the court issued notice on 15<sup>th</sup> October 2020 to say that it would not be sitting between 12<sup>th</sup> October 2020 and 3<sup>rd</sup> October 2020 as the Judge was going to be involved in conducting interviews. When she saw the notice she knew the ruling that was slated for 27<sup>th</sup> October 2020 would not be delivered. This is what she said:-

**“3. THAT I did not however learn of such ruling due to an express Notice by the court, deferring matters slated between 26<sup>th</sup> to 30<sup>th</sup> October 2020, for hearing on 8<sup>th</sup> – 12<sup>th</sup> February 2021. Annexed and marked “AM2” is a copy of the notice.**

4. THAT upon learning of the said ruling I went to file the notice of appeal which I urge this Honorable Court to regularize by deeming it as having been filed within time, to enable me proceed to file and move the Court of Appeal for appropriate orders of stay **before the expiry of the 90 days granted by the ruling in issue and which time expires on the 16<sup>th</sup> February 2021.** Annexed herein and marked “AM3” is a copy of the Notice and evidence of payment thereof.”

4. The notice of appeal that the applicant seeks to be regularised by being deemed not be filed on time is dated 10<sup>th</sup> October 2020 and filed on 29<sup>th</sup> December 2020.

5. Both the applicant and her advocate Njugu B. Gachugu state that because of the court notice they were unaware of the ruling delivered electronically on 27<sup>th</sup> October 2020. They state that when they became aware of the ruling they moved to file the notice of appeal and file the instant application dated 3<sup>rd</sup> February 2021. They do not state how they became aware of the ruling, and when. There is a letter from the advocates to the Deputy Registrar seeking a copy of the ruling. The letter is dated 10<sup>th</sup> December 2020. By the time they had prepared the notice of appeal dated 10<sup>th</sup> October 2020 which they filed subsequently. The advocate did not deny the email address that was used to

send the ruling, and there is no dispute the ruling was delivered to the address. He was silent on this.

6. The respondents opposed the application to further extend time and to give further stay. They stated that the applicant had only stated that she was unaware of the ruling of 27<sup>th</sup> October 2020 without saying when and how she had become aware. Secondly, that the notice of 15<sup>th</sup> October 2020 had only rescheduled hearings and not rulings/judgments. Thirdly, assuming that she was not aware of the ruling of 27<sup>th</sup> October 2020 she had not shown that any effort was made to find out when the ruling would be delivered. Lastly, respondents attacked the applicant's conduct which they said was bent on delaying the justice of this succession cause.

7. My considered view of the matter is that, the ruling of 27<sup>th</sup> October 2020 electronically reached the applicant's advocate, and therefore time begun to run then. It is also true that there was a notice calling off the hearings of matters by the court, and there was no notice that the rulings and judgments would be delivered electronically to the parties.

8. That being the case, and in the wider interest of justice, I allow the application and order that the notice of appeal filed on 29<sup>th</sup> December 2020 shall be deemed to be properly and timeously filed. I, however, decline to give stay. I make no order as to costs.

**DATED and DELIVERED NAIROBI this 3<sup>RD</sup> day of MAY 2021.**

**A.O. MUCHELULE**

**JUDGE**