



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

SUCCESSION CAUSE NO.12 OF 2017

IN THE MATTER OF THE ESTATE OF THE LATE JOHN JAMIN MUSUNDI(DECEASED)

PHILIP MATANDA MUSUNDI.....1ST RESPONDENT

STEPHEN FRANCIS MUSUNDI.....2ND RESPONDENT

JOEL LUMBASI MUSUNDI.....3RD RESPONDENT

VERSES

JOYCE SIKHOYA BARASA.....1ST APPLICANT

DOROTHY LUSIKE MUYERA.....2ND APPLICANT

ESTHER MATINGI WESONGA.....3RD APPLICANT

RULING

1. The summons by the 2nd Applicant dated 7th August, 2019 prays that leave be granted to the Applicants to file an appeal to the Court of Appeal and for an enlargement of time to file the same. This is in reference to this court's decision rendered on 23rd July, 2019 in which the court distributed the estate of the deceased herein to the beneficiaries.
2. The Applicant through her supporting affidavit states simply that together with the rest of the Applicants they are dissatisfied with the above judgement and thus their desire to appeal. That she could not appeal without the leave of this court as the same was not automatic. She has attached a copy of the notice of appeal as an annexure to her affidavit in support.
3. **JOEL LUMBASI MUSUNDI** the 3rd Respondent has objected on his own behalf and that of the other respondents vide his replying affidavit dated 26th February, 2020. They argue that this court does not have jurisdiction do grant the application herein and that she should apply at the Court of Appeal. He said that the Applicant did not disclose why they did not file the application within the requisite time. He stated that the Applicant's intention is to simply delay the administration the estate.
4. Having read the application as well as the proceedings herein, it is noted that the Applicants have file a Notice of Appeal dated 23rd July, 2019. This court vide a ruling dated 18th December, 2019 permitted the parties to carry out the sub division of the estate as per the grant confirmed with a rider however that no titles be issued until the determination of the intended appeal by the applicants.
5. This application comes hot on the heels of the above ruling. Section 7 of Cap 9 the Appellate Jurisdiction Act states as follows;

“The High Court may extend the time for giving notice of intention to appeal from a judgment of the High Court or for making an application for leave to appeal or for a certificate that the case is fit for appeal, notwithstanding that the time for giving such notice or making such appeal may have already expired”
6. The same grants this court to make such orders. Although it is argued by the Respondents that no meaningful steps have been taken by the Applicant to process the appeal, I do not find the period between the judgment and the making of this application very inordinate. In other words, there have been other intervening applications which in essence have not prejudice the Respondents.
7. More importantly there is no prejudice as such to be suffered by any of the beneficiaries herein considering the ruling I gave on 18th December, 2019.

8. In the premises, the application is hereby allowed with no orders as to costs.

Dated, signed and delivered via phone at Kitale on the 12th day of May, 2020.

H. K. CHEMITEI

JUDGE

12/5/2020