



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI**

**(FAMILY DIVISION)**

**SUCCESSION CAUSE NO 792 OF 2017**

**IN THE MATTER OF THE ESTATE OF DAULATKHANU MANSURALI HASSANALI DHARANI (DECEASED)**

JAMIL NAVAZ DOSSA.....OBJECTOR/1<sup>ST</sup> APPLICANT

JASMYN NAVAZ DOSSA.....2<sup>ND</sup> APPLICANT

JAMIL NAVAZ DOSSA (suing as

Next Friend of JIHANARA NAVAZ DOSSA).....3<sup>RD</sup> APPLICANT

VERSUS

RASHIK KANTARIA

HASSANALI ALIMOHAMED DAMJI

PYARALI GULAMHUSSEIN NANJI.....PETITIONERS

RAHIM MANSURALI

HASSANALI DHARANI.....1<sup>ST</sup> BENEFICIARY/RESPONDENT

FATIMA MANSURALI DHARAN....2<sup>ND</sup> BENEFICIARY/RESPONDENT

**R U L I N G**

1. The application before court is dated 18<sup>th</sup> December, 2018 it seeks for leave of court to appeal against this court's ruling of the 7<sup>th</sup> of December, 2018.
2. The grounds of the application being that there is no automatic right of appeal, there are arguable issues and the application has been filed without undue delay.
3. The application is supported by the affidavit of Jude Nalyanya the Advocate in conduct of the Applicant's case wherein he indicates that his clients are aggrieved by the court's ruling and it will be in the interest of justice that the Applicants be accorded an opportunity to ventilate their issues on appeal.
4. The Petitioners objected to the application by filing grounds of opposition dated 31<sup>st</sup> January, 2019 stating that the application is incompetent, defective, and bad in law; was filed after undue delay, which delay was not explained, no grounds were advanced to warrant the order and the witnesses are available to testify, no grounds of the intended appeal were annexed and there is an apparent and real intention to delay matter.
5. On their part the beneficiaries filed a replying affidavit in opposition stating that the application is not merited; no notice of Appeal has been filed; no application for typed proceedings was made and in the absence of notice of Appeal the application is superfluous, and incompetent, it's an abuse of court process, and prejudicial to the beneficiaries.

6. From the onset I find that since the ruling of the court was delivered on the 7<sup>th</sup> of December, 2018 and the application subject matter filed on the 19<sup>th</sup> of December, 2018 the same was filed within time and the allegations of inordinate delay cannot stand.

7. Having said the above, granting of leave in Probate and Administration matters is discretionary depending on the facts and circumstances of a case. The Court of Appeal in **Rhoda Wairimu Kioi and John Kioi Karanja vs Mary Wangui Karanja and Salome Njeri Karanja Civil Appeal Nai 69 of 2004** stated:

**“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 from the High Court or where the application is refused with leave of this court. Leave to appeal will normally be granted where prima facie it appears that there are grounds which merit serious judicial consideration. We think this is a good practice that ought to be retained in order to promote finality and expedition in determination of probate and administration disputes....”** (*emphasize provided*).

8. In the application the reason given for the intended appeal is that the Applicants are aggrieved, no grounds of the intended appeal were alluded to, that would draw this court’s attention to grounds that “merit serious judicial consideration” at the Court of Appeal, or a draft Memorandum of Appeal.

9. In the circumstances I find no merit in the application and the

same is declined.

**Dated and Delivered in Nairobi on this 9<sup>th</sup> day of May, 2019**

.....

**ALI-ARONI**

**JUDGE**