

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO. 578 OF 2004

(IN THE MATTER OF THE ESTATE OF KIRAGU NGIGIE)

ISAAC KWIHA NGIGIE.....APPLICANT

VERSUS

DIANA NYAMBURA KIRAGU.....1ST RESPONDENT

GRACE WANJIRU NGIGIE.....2ND RESPONDENT

RULING

The applicant is seeking leave to have his newly appointed advocates represent him in this cause, the cause having been concluded and the judgment delivered; he also seeks extension of time within which to apply for leave to appeal against the decision of this court delivered on 12 November 2018. If this leave is granted, he wants yet another leave to appeal.

These prayers are encapsulated in the applicant's summons general dated 3 December 2018 and supported by the applicant's own affidavit in which he has deposed that though his previous advocates timeously filed and served a notice of appeal after the delivery of the judgment of 12 November 2018 no leave had been sought and by the time this application was filed he was already out of time.

The 1st respondent opposed the summons and filed a replying affidavit swearing that the applicant is only out to delay the completion of the administration of the deceased's estate. The intended appeal, so he has sworn, does not have any chance.

I note that indeed the applicant filed the notice of appeal within time and soon thereafter filed the present application. This has not been contested by the respondent.

It may be that the applicant's intended appeal has no chance of succeeding as argued by the respondents but this is not for me to determine; this is a question that should be taken up in the Court of Appeal. All I can say is that I do not find any reason to deny him leave to appeal. Accordingly leave is hereby granted for him to appeal and the notice of appeal dated 23 November 2018 and filed on 27 November 2018 is deemed as duly filed and served. The respondents shall, however, have the costs of the application.

Dated, signed and delivered in open court this 18th day of October 2019

Ngaah Jairus

JUDGE