

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITUI

CIVIL MISC. APPLICATION NO. 2 OF 2017

JOSEPH NZAU.....APPLICANT

VERSUS

WANGUMA MUTHANGYA KALOLE.....1ST RESPONDENT

KAPENDI MUTHANGYA.....2ND RESPONDENT

R U L I N G

1. **Joseph Nzau** whom I shall refer to as the Applicant, though he describes himself as an Appellant, filed a Notice of Motion dated **9th December, 2016** seeking leave to appeal out of time.

2. The application is premised on grounds that the delay to file the Appeal was not intentional as he applied to be supplied with proceedings and ruling soon after the ruling was delivered but the Court delayed in supplying the same. That if granted, the order sought will not prejudice the Respondent and it will be in the interest of justice for it to be granted.

3. The Applicant deponed an affidavit in support of the application where he deponed that the ruling he seeks to appeal against was delivered on the **25th June, 2016**. He filed a Memorandum of Appeal but was advised to seek leave to appeal out of time.

4. The Respondents did not file a reply to the application but appeared before Court and argued that the Applicant was not a party to the case therefore he cannot purport to appeal and further that they did not sell land to him therefore he had no case against him.

5. I have considered the application and the ruling the Applicant seeks to appeal against. The matter emanates from **Succession Cause No. 108 of 2012** where the Estate in question is for **Muthangya Kalole** (Deceased). Letters of Administration in the stated Estate were issued to **Wanguma Muthangya Kalole**. An Affidavit in Protest to the confirmation of grant was filed by one **Kapandi Muthanja** who alleged that he had purchased a parcel of land from the Deceased. The learned Magistrate considered the Protest and reached a decision that the Petitioner and the Protester be registered as joint owners of the land. There were other beneficiaries to the Estate that were not considered. I have perused the affidavit in support of the Petition for Letters of Administration dated **14th June, 2012** where the Applicant is listed as an Interested Party.

6. The Applicant herein was not one of the parties in the Ruling he seeks to appeal against. The matter having been a Succession Cause he could move the Court by filing an application for revocation of the grant. I have noted many errors having been made in the matter. According to **Section 76** of the **Law of Succession Act**, an interested party may move the Court to revoke or annul a grant whether or not it is confirmed.

7. From the foregoing I decline to grant leave sought by the Applicant.

8. Accordingly the application is dismissed with no orders as to costs.

9. It is so ordered.

Dated, Signed and Delivered at Kitui this 16th day of May, 2018.

L. N. MUTENDE

JUDGE