

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

MISC. APPLICATION 330 OF 2013

The Personal Representative of the Estate of The Late Gerishon

Kamau Kirima DECEASED.....APPELLANT/ APPLICANT

VERSUS

NZOMO WAMBUADEFENDANT/RESPONDENT

RULING

This is an application by way of Notice of Motion under Order 43 Rule 2, Order 51 rule 1 and 3 of the Civil Procedures Rules, Section 79 G and 3A of the Civil Procure Act for leave to appeal out of time. The reasons are set out on the face of the application, and the supporting affidavit sworn by the advocate for the applicant.

The application is opposed and grounds of opposition filed. It would appear that leave had earlier been granted but no step was taken by the applicant hence the respondent's submission that the issue is res judicata.

The respondent is said to hold a judgement in his favour and any continued denial of the benefit of that judgment is prejudicial. There is also the issue of whether or not the advocate Njeri Kariuki had authority to act for the estate of Gerrison Kamau Kirima.

I have examined the material before me. The delay in filing the application has been explained and in my view is excusable. The memorandum of appeal on record contains what appears to be arguable grounds. No prejudice has been demonstrated may be visited upon the respondent if the orders sought are allowed. Technicalities have been outlawed by law and I believe the discretion of this court should be exercised in favour of the applicant.

Accordingly, the application is allowed, and I order that the applicant shall file the appeal within 30 days from today. The circumstances of this case dictate that the respondent be paid the costs of the application. It is so ordered.

Dated, signed and delivered at Nairobi this 6th Day of April, 2017.

A. MBOGHOLI MSAGHA

JUDGE