



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**FAMILY DIVISION**  
**SUCCESSION CAUSE NO. 1728 OF 2000**  
**IN THE MATTER OF THE ESTATE OF MWANGI KIMANGA (DECEASED)**

PRISCA WANJIKU KIMANGA.....1<sup>ST</sup> APPLICANT

STEPHEN MAINA KIMANGA.....2<sup>ND</sup> APPLICANT

VERSUS

ALICE WANJIKU MWANGI.....1<sup>ST</sup> RESPONDENT

MARY WAIHERA KIMANGA.....2<sup>ND</sup> RESPONDENT

JANE WAMAITHA KIMANGA.....3<sup>RD</sup> RESPONDENT

AND

GERALD IRUNGU.....1<sup>ST</sup> INTERESTED PARTY

ALICE WANJIRU.....2<sup>ND</sup> INTERESTED PARTY

**RULING**

1. On 11<sup>th</sup> December 2015, this court revoked grant of letters of administration intestate issued to the applicants on 19<sup>th</sup> March 2001 and confirmed on 10<sup>th</sup> October 2004 after it emerged that the deceased had died testate leaving behind a written will. In the said judgment, the court ordered that the executors appointed as per the will do immediately file a petition for grant of probate wherein the respondents would file the necessary objections.
2. On 25<sup>th</sup> November 2016 the applicants filed this motion seeking extension of time to seek leave to appeal against the decision of this court; that this application be deemed to be filed within time; they sought leave be granted and that there be stay of the orders granted by this court pending the hearing and determination of the intended appeal. The application was premised on the grounds that the applicants were desirous of challenging the decision of this court by filing an appeal and

therefore sought stay of the orders as they appealed. They stated that they would suffer irreparably if the stay is not granted, and that they had an arguable appeal. They deponed that they had filed a Notice of Appeal on 14<sup>th</sup> December 2015 and served it on the respondents, and went on to state:-

**“7. THAT leave is indispensable before the appellants can lodge an intended appeal.”**

3. The respondents and interested parties filed grounds of opposition to oppose the application. This court asked the parties through their counsel to file and exchange written submissions. This was done.
4. This application can be disposed of quite easily. The applicants filed a Notice of Appeal to challenge the decision of this court. It is clear that it was subsequently discovered that the decision rendered by this court was such that leave was required before the appeal was filed. If it is considered that the decision was made on 11<sup>th</sup> December 2015 and the instant application for leave was brought on 25<sup>th</sup> January 2016, a month and a few days later, I do not think that there was delay. A party who seeks to appeal against a decision that has aggrieved him in a succession matter in which there is a substantial and valuable estate, like in this case, should be allowed to do so by the grant of leave. In any case the law on the right of appeal against original decision of the High Court to the Court of Appeal is settled in **(Makhangu –v-s Kibwana [1995-198] 1 EA 175)** relation to succession cases under the **Law of Succession Act (Cap. 160)**.
5. The time of the application for leave to appeal is not indicated, but considering that an appeal is usually filed within 30 days it is expected that the leave be obtained before the expiry of that period. Therefore, the application for leave should be brought within the appeal period. I am aware of **Order 50 rule 6** of the **Civil Procedure Rules** that empowers the court to enlarge time. Noting that there has not been inordinate delay, I allow the application or leave so that the Notice of Appeal shall be deemed to be properly and legally filed.
6. As for stay, it is notable that the court found that there was a confirmed grant of letters of administration intestate when in fact the deceased left a will. The grant was revoked for a petition for grant of probate to be filed. In that case, the petition has to be filed and objections filed by the applicants after the gazette. That is a process that will take long before any grant is either issued or confirmed. Without these processes no one can appropriate the property of the deceased. In other words, the applicants have not shown that if stay is not granted they will suffer substantial loss. Better still, there is no decree that is capable of being executed as a result of the decision that was made on 11<sup>th</sup> December 2015. The request for stay is therefore misplaced.
7. In that limited sense, therefore, the application is allowed. The applicants have been indulged and will therefore pay the costs of the application.

**DATED and SIGNED at NAIROBI this 7<sup>th</sup> day of JUNE 2016**

**A.O. MUCHELULE**

**JUDGE**

**DATED and DELIVERED at NAIROBI this 9<sup>TH</sup> day of JUNE 2016**

**W. MUSYOKA**

**JUDGE**

