

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MURANG'A

MISC CIVIL APPLICATION NO 13 OF 2014

SAID A KARIAMBURI.....APPLICANT

VERSUS

ZUHURA A KARIAMBURI.....RESPONDENT

R U L I N G

1. The Applicant seeks by the application the subject of this ruling leave to appeal out of time against the judgement of *Nyeri Kadhi's Court Succession Cause No 8 of 2006* entered on 31/03/2009. It was entered as a consent judgment, though the Applicant claims in his supporting affidavit that he consented to the judgement upon coercion by the Kadhi.
2. The Respondent has opposed the application. She has averred in her replying affidavit that the judgment was consented to by all the beneficiaries of the estate, including the Applicant and the Respondent; that the Applicant was then represented by counsel who was in court; that the estate was thereafter distributed in accordance with the consent judgment; and that the application has been made after inordinate delay and is an abuse of the process of the court. The Respondent also pointed out that some of the beneficiaries have since disposed of their interests to third parties. There was a further affidavit filed in response to the replying affidavit.
3. I have considered the submissions of the learned counsels appearing. **Section 50(2)** of the *Law of succession Act, Cap 160* (the Act) grants a right of appeal from an order or decree of a Kadhi court to the High Court. No time-frame has been given by the Act or the *Probate and Administration Rules (P & A Rules)* made under the Act within which such appeal may be filed. Although the P & A Rules import certain rules of civil procedure made under the *Civil Procedure Act, Cap 21* into proceedings under those Rules, the rules of civil procedure so imported do not include **Orders 42** and **43** of the *Civil Procedure Rules, 2010* (formerly **Orders XLI** and **XLII**) that deal with civil appeals. The Law of Succession Act itself does not import **section 79G** of the Civil Procedure Act that gives time-frames within which appeals to the High Court from subordinate courts may be filed, and the court's discretion to extend such time.
4. It appears to mean therefore that appeals under section 50 of the Law of Succession Act may be filed at any time after the passing of the order or decree appealed against. Needless to say, such time must be reasonable in the circumstances of the case.
5. The Applicant herein is seeking to appeal against a decree passed on 31/03 2009, more than six years ago. He says that the Kadhi court delayed in supplying to him typed copies of proceedings and judgment. But he has not exhibited a single letter he may have written to the court seeking such copies, or complaining of delay in supplying them. He does not even disclose when he was supplied with copies of the proceedings and judgment.
6. The Applicant has also complained that at some point the lower court file went missing; but he has not exhibited any letter he may have written to the lower court complaining about the un-availability of the court file. Nor has he disclosed when the file became available.
7. In the circumstances of this case six years is too long a time to reopen succession proceedings, particularly where the decree sought to be challenged was entered by consent. Succession proceedings by

their very nature are supposed to be dealt with and disposed of expeditiously. The court would be loath to permit the reopening of such proceedings without a very good reason. The Applicant in this case has not supplied such good reason. Litigation must at some point come to an end.

8. I find no merit in the application for leave to appeal out of time. The same is dismissed with costs to the Respondent. It is so ordered.

DATED AND SIGNED AT MURANG'A THIS 6TH DAY OF MAY 2015

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 8TH DAY OF MAY 2015