



REPUBLIC OF KENYA



KENYA LAW
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**Chesang & 5 others v Koech & 2 others (Civil Application
E096 of 2024) [2025] KECA 1628 (KLR) (9 October 2025) (Ruling)**

Neutral citation: [2025] KECA 1628 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPLICATION E096 OF 2024
MA WARSAME, JA
OCTOBER 9, 2025**

BETWEEN

JANE CHESANG & 5 OTHERS & 5 OTHERS APPLICANT

AND

CALIPH KIPTANUI KOECH & 2 OTHERS & 2 OTHERS RESPONDENT

(An application for extension of time to file an appeal out of time against the judgment of the High Court at Nakuru (Justice A. L. Omollo) delivered on 5th July, 2023 in ELC No. E 2 of 2022)

RULING

1. The application before me dated 11th April 2024 seeks extension of time to file an appeal out of time against the judgment delivered by Hon. Justice J.K. Sergon on 14th December 2023 in Succession Cause No. 86 of 2024 at Kericho High Court.
2. The succession cause concerned the estate of the late Stanley Kesusu Kimwei who died intestate. The respondents were appointed administrators on 17th July 2015 and filed summons for confirmation of grant on 24th August 2018. Weldon Koech protested, alleging excluded beneficiaries and properties. Justice J.K. Sergon dismissed the protest on 14th December 2023 and confirmed the grant.
3. The applicants seek extension of time to appeal, averring that they became aware of the judgment on 4th March 2024 and subsequently filed this application on 11th April 2024. They contend that they are beneficiaries who have been excluded from the distribution of the deceased's estate.
4. The respondents, through the replying affidavit of Charles Kiprotich Koech sworn on 23rd January 2025, oppose this application on several grounds. First, they contend the applicants lack locus standi having never been parties to the succession proceedings. Second, they point to procedural defects including incomplete service of the initial notice of motion. Third, they argue the applicants demonstrated no interest in the succession proceedings over an extended period.



5. The respondents have raised a jurisdictional challenge to wit: whether parties who were not parties to the protest in the High Court succession proceedings can file the instant application.
This is not merely a procedural objection but a jurisdictional challenge that goes to the root of this Court's power to entertain the intended appeal.
6. I have carefully examined the record of proceedings in the High Court. It is abundantly clear that none of the six applicants herein - Jane Chesang, Eunice Cherotich, Leah Chepkemoi, Recho Koech, Esther Langat, and Alice Birir Koech - were parties to Succession Cause No. 86 of 2024. The protester in the High Court was Weldon Koech, who is, notably, not one of the applicants in this application.
7. The applicants attempt to circumvent this fundamental defect by asserting that some of them testified as witnesses in the High Court proceedings. However, being a witness does not confer party status. A witness participates in proceedings at the invitation of a party but does not become a party themselves by virtue of testifying. The distinction between a party and a witness is fundamental to our procedural law.
8. The applicants further contend that they are potential beneficiaries under section 29 of the [Law of Succession Act](#) and should therefore be allowed to appeal. While I acknowledge that succession matters involve unique considerations regarding potential beneficiaries, this does not override the statutory requirement that only parties to proceedings have a right of appeal.
9. If the applicants believed they had an interest in the estate that was being prejudiced by the proceedings, the proper course of action was to regularise their status as parties before the High Court or before this court by way of a formal application. They did not do so. They cannot now, after an adverse decision has been rendered, seek to appeal as if they had been parties all along.
10. Even if I were to overlook the fundamental question of locus standi (which I am not inclined to do), the applicants have failed to provide an adequate explanation for the delay in filing this application.
11. The judgment was delivered on 14th December 2023. According to the applicants, they became aware of the judgment on 4th March 2024 - a period of approximately 2 months and 3 weeks after the judgment. The application was then filed on 11th April 2024, making the total delay approximately 4 months from the date of judgment.
12. In my view, the applicants' explanation that they were only informed of the judgment on 4th March 2024" and took action on 13th March 2024 to request the High Court of Kericho to issue them with the certificate of delay and court proceedings is wholly inadequate.
13. No explanation whatsoever is provided for why they were unaware of the judgment for nearly three months after it was delivered. If they genuinely believed they had an interest in the estate, they should have been monitoring the proceedings. Moreover, even after becoming aware of the judgment on 4th March 2024, it took them over one month (until 11th April 2024) to file this application, and no explanation is given for this further delay. The applicants' conduct demonstrates a lack of diligence. If they truly believed their inheritance rights were at stake, they should have taken proactive steps to either participate in the proceedings or monitor them closely. Ironically, the assertion that they were not informed of the ruling because they were not formal parties actually undermines rather than supports their case, as it highlights their failure to join themselves as parties when the opportunity existed. An applicant seeking extension of time must demonstrate that the delay was not occasioned by indolence or carelessness but by factors beyond the applicant's control.



14. Applying the principles established in *Imperial Bank Ltd (in receivership) and Another v Alnasir Popat and 18 Others* [2018] eKLR, where the Court held that

“some of the considerations to be borne in mind while considering an application for extension of time include the length of the delay involved, the reason(s) for the delay, the possible prejudice, if any, that each party stands to suffer depending on how the court exercises its discretion; the conduct of the parties; the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal”,

I find that the delay from judgment (14th December 2023) to filing this application (11th April 2024) has not been sufficiently explained.

15. For the foregoing reasons, I find and hold that this application is fundamentally flawed and cannot succeed. Consequently, I dismiss the application with no orders to cost.

DATED AND DELIVERED AT NAKURU THIS 9TH DAY OF OCTOBER 2025.

M. WARSAME

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

Deputy Registrar

