



**Mwendwa & 2 others v Mudinyu & 2 others (Civil Application  
E027 of 2025) [2025] KECA 1804 (KLR) (31 October 2025) (Ruling)**

Neutral citation: [2025] KECA 1804 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CIVIL APPLICATION E027 OF 2025  
MA WARSAME, JA  
OCTOBER 31, 2025**

**BETWEEN**

**OSSALLA MWENDWA ..... 1<sup>ST</sup> APPLICANT  
EDWARD MWENDWA ..... 2<sup>ND</sup> APPLICANT  
KALEB MWENDWA ADAMBA ..... 3<sup>RD</sup> APPLICANT**

**AND**

**RACHEL MILOYO MUDINYU ..... 1<sup>ST</sup> RESPONDENT  
HARRIET KASIRA MUDINYU ..... 2<sup>ND</sup> RESPONDENT  
PEGGY NIGIDE MUDINYU ..... 3<sup>RD</sup> RESPONDENT**

*(An application for extension of time within which to file a Notice of Appeal against the ruling of the High Court (Nyaga J.) dated 16th January 2025 in Succession Cause No. E129 of 2021)*

**RULING**

1. Before me is an application dated 18<sup>th</sup> March 2025 seeking enlargement of time within which to file a notice of appeal against the ruling delivered on 16<sup>th</sup> January 2025 by Nyaga J, in Nakuru Succession Cause No. E129 of 2021 wherein the learned judge found that the grant of letters of administration that had been confirmed on 26<sup>th</sup> January 2023 was obtained by concealment of material facts, revoked it and ordered that a fresh grant be issued to include Peggy Nigide Mudinyu (the 3<sup>rd</sup> respondent) as a child and beneficiary to the estate with equal priority as the other children of the deceased.
2. The reason for delay in filing the notice of appeal against the impugned ruling as stated on the face of the application is that one of the beneficiaries, Gilphine Muchinyi, resides and works in the United States and was inaccessible in January and February 2025 due to work assignments. The applicants



state they were unable to communicate the ruling to her until the second week of March 2025, when a consensus was reached to lodge an appeal.

3. The 3rd respondent, Peggy Nigide has filed a replying affidavit dated 25<sup>th</sup> March 2025 opposing the application. She contends that the present application is fatally defective and an afterthought given that Gilphine Muchinyi was just a beneficiary and the decision to appeal was not one to wait for her input, the court in adjourning its delivery of rulings on several occasions does not in any way stop the applicants from filing the notice of appeal in time, as the ruling was delivered and the advocate for the applicants was present. She further states that she has already commenced implementation of the court's orders and that the excuse given by the applicants for failure to file the notice of appeal on time is unacceptable and an act of indolence
4. The principles governing applications for extension of time are well settled. As stated in Abdul Aziz Ngoma vs. Mungai Mathayo [1976] eKLR, sufficient reason must be demonstrated. As further elaborated in Fakir Mohamed vs. Joseph Mugambi & two others, Civil Application No. Nai. 332/04, relevant factors include the period of delay, the reason for the delay, and the chances of the appeal succeeding.
5. I have considered the application and the replying affidavit. The Ruling was delivered on 16<sup>th</sup> January 2025. The statutory period for filing a notice of appeal expired on 30<sup>th</sup> January 2025. This application was filed on 18<sup>th</sup> March 2025, approximately seven weeks after the expiry of the appeal period.
6. The central question in this application is whether the explanation proffered by the applicants is sufficient to warrant the exercise of discretion in their favour. The applicants contend that they needed to consult with Gilphine Muchinyi, a beneficiary residing in the United States, before making a decision to appeal, and that achieving this consensus took time. I find this explanation inadequate for several reasons.
7. First, while beneficiaries have interests in succession proceedings and can appeal decisions affecting their inheritance rights, this does not excuse the delay. The learned judge's ruling, by recognizing the 3rd respondent as a beneficiary with equal priority, necessarily reduced the share available to other beneficiaries, including Ms. Muchinyi. If she felt aggrieved and wished to challenge the ruling, the proper course would have been to seek leave to be joined as a party to any appeal, or to work through the administrators who were already proper parties to the proceedings.
8. Second, the proper course, was not to allow statutory timelines to expire during consultations. The administrators had clear options: file the notice of appeal within time to protect appellate rights while consultations continued, or have Ms. Muchinyi joined as an applicant once contacted. A notice of appeal is a protective procedural step, distinct from the decision to prosecute the appeal. Filing it does not commit the appellants to proceeding if, upon reflection, they decide otherwise. The fact that Ms. Muchinyi's interests were directly engaged should have prompted the administrators to act swiftly to preserve appellate rights, not to delay.
9. Third, even accepting, for the sake of argument that the applicants genuinely wished to consult with Ms. Muchinyi before proceeding, the explanation fails to account for why this consultation could not have been accomplished within the fourteen-day statutory period or shortly thereafter. The applicants aver that Ms. Muchinyi was "inaccessible" due to work assignments. This is vague and unconvincing. We live in an era of instant global communication. Even if Ms. Muchinyi was engaged in demanding work assignments, there is no explanation as to why she could not be reached by telephone, email, text message, or any of the myriad electronic means of communication available. The assertion of "inaccessibility" is not supported by any specific facts as to what efforts were made to contact her or why those efforts failed.



10. Fourth, the applicants have not annexed a draft memorandum of appeal setting out the proposed grounds of appeal. They have not addressed, even in general terms why the judgment should be disturbed. In the absence of such material, I am unable to conclude that the intended appeal has any reasonable prospect of success, let alone that it raises grounds meriting serious judicial consideration.
11. Balancing all the relevant considerations, I find that the applicants have failed to demonstrate sufficient reason for the extension of time sought. The delay of seven weeks is substantial. The explanation proffered is inadequate and unconvincing. The applicants have failed to demonstrate the requisite diligence.
12. The application is accordingly dismissed with costs to the 3rd respondent.

**DATED AND DELIVERED AT NAKURU THIS 31<sup>ST</sup> 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**

