Nderitu v Nderitu (Civil Application E116 of 2025)
[2025] KECA 1708 (KLR) (24 October 2025) (Ruling)

Neutral citation: [2025] KECA 1708 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NYERI

CIVIL APPLICATION E116 OF 2025

S OLE KANTAI, JA

OCTOBER 24, 2025

BETWEEN

RUTH GATHONI NDERITU ..... APPLICANT

AND

JANET KABUI NDERITU ..... RESPONDENT

(An application for extension of time to file an Appeal from the Ruling and Orders of the High Court at Nyeri (Kizito Magare, J.) delivered on 6th May, 2025 in H.C. Succ. Cause No. 242 of 1997)

RULING

1. Rule 41 of the Court of Appeal Rules on application for leave to appeal in civil matters provides that:-

> "(1) In a civil matter-
>
> a. where an appeal lies with the leave of the superior court, application for such leave may be made-
>
> i. informally at the time when the decision against which it is desired to appeal is given; or
>
> ii. by motion or chamber summons according to the practice of the superior court, within fourteen days of such decision;
>
> b. where an appeal lies with the leave of the Court, application for such leave shall be made-

i. in the manner laid down in rules 44 and 45 within fourteen days after the decision against which it is desired to appeal; or

ii. where application for leave to appeal has been made to the superior court and refused, within fourteen days after such refusal."

2. Kizito, J. delivered a ruling on 6th May, 2025 where he made orders against which the applicant intends to appeal. I am told that the Judge refused the applicant (Ruth Gathoni Nderitu) leave to appeal.

3. The applicant has approached the Court by Motion dated 11th June, 2025 said to be brought under sections 3, 3A and 3B of the *Appellate Jurisdiction Act*, Rules 4, 41, 43, 44, 45, 47 and 49 of the Court of Appeal Rules, and all enabling provisions of law for grant of leave to appeal against the said ruling in Succession Cause No. 242 of 1997 In the mater of the Estate of Nderitu Kanyi alias Moses Nderitu Kanyi (deceased) and that I be pleased to consider the notice of appeal dated 6th May, 2025 as having been duly filed. It is stated in grounds in support of the Motion and in a supporting affidavit of the applicant that she is aggrieved by the said ruling and has prepared a draft Memorandum of Appeal; that the Judge issued orders without adequately considering the applicant's objections to inequality in distribution of the assets of the estate; that the ruling goes against the principle that distribution of an intestate estate among children should be equal unless special circumstances justify otherwise; that the Judge denied the applicant leave to appeal; that no party will be prejudiced if I grant leave to appeal; that there is an arguable appeal.

4. The respondent (Janet Kabui Nderitu) does not agree. In a replying affidavit she says that the application is defective and an abuse of the process of the court; that there are no arguable points of law or fact in draft Memorandum of Appeal; that the application is intended to delay the distribution of the estate which will cause her and other beneficiaries delay in the finalization of the succession cause; that the application contravenes rules 41 (1)(b) and (2) of the Court of Appeal Rules; that the application has no merit and should be dismissed.

   I have seen and considered written submissions filed by the parties.

5. The central issue I have to grapple with here is whether the applicant has brought the application as required by our rules particularly rule 41.

6. The ruling intended to be appealed was delivered on 6th May, 2025. The Judge refused leave to appeal - I believe that the refusal was after an informal application. My understanding of rule 41 of our rules is that the applicant should then have approached this Court for leave to appeal within 14 days of such refusal.

7. The application before me is dated 11th June, 2025 which is a period way out of the 14 days required by the rules.

8. Even if I was to consider the Motion on merit I would still have to be told why the 14 days period required by rule 41 to approach this Court was not met or complied with. The applicant has not given or offered any explanation why there was lack of compliance with timeliness set in law and in those premises I am unable to exercise my direction in their favour. I find the application to have no merit and I dismiss it with costs to the respondent.

DATED AND DELIVERED AT NYERI THIS 24TH DAY OF OCTOBER, 2025.

S. OLE KANTAI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR