

IN THE COURT OF APPEAL
AT NAKURU
(CORAM: WARSAME J.A. (IN CHAMBERS))
CIVIL APPLICATION NO. E033 OF 2025

BETWEEN

DR. SAMSON K.A. TIM.....APPLICANT
AND
TABARNO KOIMA.....1ST RESPONDENT & 9 OTHERS

(An application seeking extension of time to file and serve a Notice of Appeal and Record of Appeal out of time against the judgment and decree of the High Court at Nakuru (Mohochi J.) dated 28th February 2025 in Nakuru High Court Succession Cause No. 57 of 2008.

RULING

1. Before this Court is an application dated 25th March 2025 by the applicant, Dr. Samson K.A. Tim, seeking extension of time to file and serve a Notice of Appeal and Record of Appeal out of time against the judgment and decree of the High Court dated 28th February 2025 in Nakuru High Court Succession Cause No. 57 of 2008. The application is brought under Section 3A, 3B and 7 of the Appellate Jurisdiction Act, Cap. 9, Rule 4, 20(2), Rule 43, and Rule 77 of the Court of Appeal Rules 2022.
2. The applicant states that the stipulated period of 14 days for lodging a notice of appeal lapsed on 14th March 2025. His

explanation for the delay is that when he was informed of the judgment on 7th March 2025, he "unbelievably broke down and collapsed" in his advocate's office. Being elderly (born in 1960), he was granted time to recover. He states it was difficult to give instructions to file an appeal due to his age and health condition. The Applicant consequently instructed his advocates to lodge the appeal on 20th March 2025, which was after the statutory period had expired.

3. The applicant contends that the intended appeal raises serious questions of both law and fact and has a high chance of succeeding, that the delay was caused by factors beyond his control, and that it is in the interest of justice and fairness that the application be granted.
4. The 3rd respondent, Grace K. Kibitok, filed a Replying Affidavit dated 4th April 2025 opposing the application on behalf of herself and the other Respondents. She depones that, the application is incompetent, ill-advised, and bad in law given that the applicant should have first sought leave in the High Court to institute an appeal; there is no merit in the intended appeal and the applicant has not annexed a memorandum of

appeal to indicate the questions of facts and law that the intended appeal raises; the explanation that the Applicant collapsed at his advocate's office is insufficient and unsupported by any medical documentation; that the High Court correctly included the 3rd respondent as spouse based on the applicant's own affidavits and evidence from his siblings and condemned the applicant to bear costs of administration which he should rightfully bear as he unilaterally instituted succession proceedings and subdivided the estate without family consent.

5. 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.
6. I have considered the application before me. In the length of delay, I note that the delay is minimal, being only 6 days beyond

the stipulated period. The notice of appeal was due on 14th March 2025 but was filed on 20th March 2025.

7. Regarding the explanation for delay, the applicant deposes that he collapsed upon learning of the adverse judgment. While it is true that no medical evidence has been provided, I note that the applicant is elderly. The Court is alive to the reality that elderly persons may be more emotionally and physically affected by adverse court decisions, particularly in family succession matters which are inherently sensitive and emotionally charged. The delay of 6 days in these circumstances, while not ideal, is understandable. The law does not require perfection; it requires reasonableness.
8. On the merits of the intended appeal, I have examined the draft Notice of Appeal and the impugned judgment. The intended appeal raises arguable issues concerning the inclusion of the 3rd respondent as a beneficiary despite allegations that she was not validly married to the deceased's son; (b) findings regarding the estate property; and (c) the apportionment of costs of administration. These are issues that merit judicial consideration by this Court.

9. I note the 3rd respondent's objection regarding the requirement for leave to appeal in succession matters. It is correct that under the Law of Succession Act there is no express automatic right of appeal to this Court from decisions of the High Court exercising original jurisdiction. The issue of whether leave to appeal is required, and if so, whether such leave has been properly obtained, is a matter that will be determined by the Court when the appeal comes before it. For purposes of this application for extension of time, it is sufficient that the applicant has demonstrated an intention to appeal and has provided an acceptable explanation for the delay in filing the Notice of Appeal.
10. I am satisfied that this is a proper case for the exercise of the Court's discretion in favour of the Applicant. I make no orders as to costs.

Dated and delivered at Nakuru this 31st 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