



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Kerore v Kerore (Civil Appeal (Application) E691 of 2024)
[2025] KECA 1837 (KLR) (7 November 2025) (Ruling)**

Neutral citation: [2025] KECA 1837 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) E691 OF 2024
M NGUGI, JA
NOVEMBER 7, 2025**

BETWEEN

SINTAMEI KERORE APPLICANT

AND

PETER KERORE RESPONDENT

*(Being an application for extension of time under rule 4 of the
Court of Appeal Rules to file a Gikonyo J) dated 30th April 2024)*

RULING

1. In the application dated 13th December 2024, the applicant, Sintamei Kerore, seeks Waweru Kerore (alias Waweru Ole Kerore) be distributed under section 40 of the Law of Succession Act. The applicant prays that his application be certified urgent, that time for filing and serving the notice of appeal and the memorandum and record of appeal be extended, and that costs be provided for.
2. In the grounds in support of his application, the applicant avers that the impugned judgment was delivered on 30th April 2024 but his then advocates failed to inform him; that he and his wife made several calls and visits to his advocates without success; that when they eventually visited the court in late November 2024, they learnt that judgment had already visited upon the litigant; and that the respondent will suffer no prejudice if time is enlarged.
3. In his affidavit in support of the application, the applicant avers that he is a son of the deceased, who died intestate leaving two widows and several children. He deposes that he, his two brothers and sister filed a succession cause in the Chief Magistrate's Court in 2018 seeking distribution of the deceased's properties and that the letters of administration issued therein were challenged in the High Court. He proposed that distribution be according to Maasai customary law, which gives each house an equal share before sub-



4. The applicant annexes to his affidavit in support of the application an affidavit sworn on 13th December 2024 by his wife, Esther Nyambura Sintamei, which basically echoes the averments in his affidavit.
5. There is no response to the application, though there is an affidavit of service indicating that the respondent was duly served.
6. I have considered the application and the applicant's submissions dated 16th January 2025. Under rule 4 of the Rules of this Court, the Court has the unfettered discretion to extend time for the doing of any act required under the Rules. In determining whether to exercise the said discretion in favour of a party, the Court has to consider the length of the delay, the reasons for the delay, (possibly) the chances of the appeal succeeding, and the prejudice likely to be suffered by the respondent should leave be granted-see *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* (Civil Application No Nai 255 of 1997 and *Thuita Mwangi v Kenya Airways Ltd* [2003] KECA 201 (KLR).
7. In this case, the impugned judgment was delivered on 30th April 2024. As provided in rule 77(2) of this Court's Rules, the applicant ought to have filed a notice of appeal within 14 days from that date, while the memorandum and record of appeal ought to have been filed within 60 days from the date of lodging of the notice of appeal.
8. The present application was lodged on 14 December 2024, some seven months or approximately 157 days from the date of the judgment. A delay of seven months is consider able, but the law does not set any minimum or maximum period of delay. What matters is that the delay is satisfactorily explained-see *Andrew Kiplagat Chemaringo v Paul* inquiries from his former advocates about the delivery of the judgment, he has not specified when these inquiries were made. Further, ultimately, a matter belongs to a party, and a delay of seven months after delivery of a judgment is in my view, inordinate.
9. A further consideration under rule 4 is the chance of the appeal succeeding should leave to appeal be granted. Under the *Law of Succession Act*, there is no automatic right of appeal to this Court from decisions of the High Court- a party is required to seek leave from the High Court before filing an appeal. In *John Mwita Murimi & 2 others v Mwikabe Chacha Mwita & another* [2019] KECA 422 (KLR), this Court stated:
 - “10. It is not in dispute that the impugned ruling in this matter arises from a succession cause and the respondents did not obtain leave to appeal. The decision in *Makhangu – v- Kibwana* [1996] EA cited by the respondent was succinctly considered by this Court in *Rhoda Wairimu Karanja & another – v- Mary Wangui Karanja & another* [2014] eKLR. In analyzing the *Makhangu* decision (supra), this Court held that under the *Law of Succession Act*, there is no express automatic right of appeal to the Court of Appeal; that an appeal will lie to the Court of Appeal from the decision of the High Court, exercising original jurisdiction with leave of the High Court or where the application for leave is refused with leave of this Court. (See also in *Re Estate of Mbiyu Koinange (Deceased)* [2015] eKLR; HCC Succession Cause No. 527 of 1981).” (Emphasis added).
10. Thus, aside from the fact that the delay in this matter has not been satisfactorily explained, even were the Court inclined to grant leave, the applicant's intended appeal would be a non- starter in the absence of leave to lodge the appeal.
11. Accordingly, I find that the application dated 13th December 2024 is devoid of merit, and it is hereby dismissed.
12. There shall be no order as to costs.

DATED AND DELIVERED AT NAIROBI THIS 7TH DAY NOVEMBER, 2025 MUMBI NGUGI



.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR

