



**Ekessa & 3 others v Njung'e (Civil Application E068 of 2025)  
[2025] KECA 1997 (KLR) (18 November 2025) (Ruling)**

Neutral citation: [2025] KECA 1997 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CIVIL APPLICATION E068 OF 2025  
MS ASIKE-MAKHANDIA, JA  
NOVEMBER 18, 2025**

**BETWEEN**

**ANNETRIZA EKESSA ..... 1<sup>ST</sup> APPLICANT  
JULIE WENDY EKESSA ..... 2<sup>ND</sup> APPLICANT  
RONALD IKAMAR EKESSA ..... 3<sup>RD</sup> APPLICANT  
DIANA AKISA EKESSA ..... 4<sup>TH</sup> APPLICANT**

**AND**

**MONICA WAMBUI NJUNG'E ..... RESPONDENT**

*(Being an Application for Extension of time to file Notice of Appeal out of time and leave to file Appeal out of time from the Ruling of the High Court of Kenya at Busia, (Musyoka, J.) dated 24th January, 2025 in HCFP&A No. E011 of 2020)*

**RULING**

1. The applicants filed the instant application pursuant to the provisions of Article 159 (2) (d) of *the Constitution* of Kenya, Section 3A of the *Appellate Jurisdiction Act*, Rules 4, 5(2) (b), 43 of the Court of Appeal Rules, and other enabling Provisions of Law seeking orders that time within which to file and serve the notice of appeal as well as the record of appeal be extended and that the notice of appeal as well as the record of appeal already filed be deemed as properly filed and served on the respondent upon payment of the requisite fees.
2. The essence of the application is that the applicants were led down by their then advocates Messrs. Odumbe & Odumbe Advocates, who did not act on their instructions to process and lodge their appeal on time, that the delay was not therefore deliberate nor inordinate and had been explained sufficiently. That the intended appeal raises substantial issues of law and fact, that the applicants will suffer immense prejudice if the application is not granted as they will have been driven from the seat



of justice in violation of their constitutional and undoubted right to exhaust the appellate process. In the converse the respondent will not suffer any prejudice and that in the event of such prejudice, she can easily be compensated by an award of costs.

3. The application was strenuously opposed by the respondent through by her Replying Affidavit. She deposed that the application was fatally defective, frivolous and an abuse of the process of court. That blaming their former lawyers for their inadequacies was not sufficient reason to grant the extension of time sought. That the Applicants were merely indolent and equity does only aid the vigilant. She also maintains that litigation must come to an end and that the applicants had in any event, not obtained leave of the trial court to lodge the intended appeal, this being a succession cause whose appeal is not of right or automatic. That she had minor children to take care of and therefore, the continued uncertainty in the administration of the estate of the deceased was detrimental and prejudicial to her family.
4. The application was canvassed by way of written submissions only and without appearance of counsel and or the respective parties. Those submissions merely reiterated and expounded on the parties' positions already set out elsewhere in this ruling and there is therefore no need to rehash them.
5. Having considered the averments in the application, the supporting and replying affidavits, respective written submissions, the authorities cited and the law, there is only one issue for determination in this application which is whether, the applicants have met the threshold for the grant of the prayers sought.
6. The threshold for granting extension of time is well settled by jurisprudence of this court over the years and of course the Supreme Court of Kenya., which are that it is discretionary, that the length of the delay and reasons thereof must be explained, whether there is merit in the intended appeal and whether the extension of time will not cause undue prejudice to the respondents. See the cases of Wasike v Swala [1984] KLR p.591; Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others [2014] eKLR; and Ngei v Kibe & another [2021] KECA 243 (KLR).
7. Regarding delay, the applicants through their then Advocates lodged a notice of appeal with the trial court on 24th February, 2025, against the ruling and order of the trial court delivered on 24th January, 2025. This was pursuant to the 30 days' leave to appeal granted by the trial court on the application by the said advocates. Obviously, this was out of time under our rules which require that such notice of appeal be filed within fourteen days of the ruling or judgment sought to be appealed against. It would appear that perhaps misguided by the trial court's direction granting them leave to file the appeal within 30 days. The said advocates waited until after 14 days to lodge the notice of appeal with the trial court.
8. It was again not until 25th April, 2025, when they realized that the Notice of Appeal was not only lodged outside the timelines stipulated under Rule 77(1) and (2) of the Court of Appeal Rules, the same was equally not served on the respondent within the timelines stipulated under Rule 79(1) thereof. That is when it dawned on them to secure the services of their current Advocates on record to file the instant application. It is obvious that there were mistakes and lapses on the part of the previous advocates. From the time of lodging the Notice of Appeal and the filing this application, approximately 55 days has lapsed. I do not think that the delay is inordinate as claimed by the respondent, given the explanations for the delay a foretasted. See Mukabi v Mukabi [2004] eKLR and Anastasias H. Kamau v Karen Insurance Brokers Limited [2008] eKLR.
9. The inaction if at all, was not on the part of the applicants' part but rather, on the part of their previous Advocates. I am therefore satisfied that the explanation offered for the delay is plausible. I also adopt the now settled principle, that a mistake of a counsel or a firm of Advocates, should not be visited upon an innocent client. See the oft-cited case of this Court, Murai v. Wainaina (No.4) [1982] KLR 33 as cited in Kenya Industrial Estates Ltd v Samuel Sang & another [2008] eKLR.



10. On whether the intended Appeal is arguable, the applicants have annexed a draft memorandum of appeal, raising two principal grounds, faulting the trial court for finding that the respondent was married to the deceased and therefore entitled to inherit from the estate of the deceased and also finding that one, Collins Nduati Ekessa, a child of the respondent was a dependent of the deceased despite the respondent expressly admitting to the contrary and further disclosing his biological father's whereabouts. Preliminarily these grounds cannot be said to be frivolous. See Imperial Bank Limited (In Receivership) & another v Alnashir Popat & 18 others [2018] KECA 685 (KLR)).
11. Turning to whether the extension of time will cause undue prejudice to the respondent, much as she proclaims that the continued uncertainty in the administration of the deceased estate has impacted negatively on the welfare of the children, I am satisfied that, this alone is not a sufficient reason to deny the applicants, their constitutional and undoubted right to exhaust the appellate process. In any event, the respondent will have a chance to be heard on the intended appeal. Again, if indeed the respondent shall be prejudiced as claimed, then the prejudice can be assuaged by an award of costs. Lastly, on the issue of whether or not the applicants obtained leave of the trial court to lodge the appeal, the assertion to my mind is premature.
12. In the end I allow the application in terms of prayers two and three of the application but only upon payment of the requisite fees. Costs shall abide the outcome of the appeal

**DATED AND DELIVERED AT KISUMU THIS 18TH DAY OF NOVEMBER, 2025.**

**ASIKE-MAKHANDIA**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

