



REPUBLIC OF KENYA



In re Estate of William Kipkosgei Kiptum (Deceased) (Succession Cause 59 of 2007) [2026] KEHC 1652 (KLR) (18 February 2026) (Ruling)

Neutral citation: [2026] KEHC 1652 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 59 OF 2007
RN NYAKUNDI, J
FEBRUARY 18, 2026
IN THE MATTER OF THE ESTATE OF THE LATE WILLIAM KIPKOSGEI
KIPTUM(DECEASED)**

BETWEEN

EUNICE CHEBICHII KIPKOSGEI 1ST APPLICANT

VIOLAH CHERUTO KIPTUM 2ND APPLICANT

AND

ESTHER JEPTANUI KIPTOO 1ST RESPONDENT

EDNA JESANG KOSGEI 2ND RESPONDENT

RULING

1. What is pending before this Court is Summons application dated 26th day of November 2025 premised under Articles 48, 50 & 159 of *the Constitution* of Kenya, section 47 of the *Law of Succession Act* and Rule 41 of the Court of Appeal Rules 2022 where the Applicants are seeking the following orders: -
 - a. Spent.
 - b. The Petitioners/Applicants are hereby granted leave to file the instant Application out of time and the Application deemed as properly filed.
 - c. The Petitioners/Applicants are hereby granted leave to Appeal to the Court of Appeal against the Judgment delivered by this Honourable Court on 8th November, 2019.
 - d. Costs of the Application to abide the cause.
2. The Application is based on the grounds set out hereunder among others: -



- a. This Honourable Court rendered a Judgment on 8th November, 2019 allowing an Objection by the Objectors thereby recognizing them as beneficiaries in the estate.
- b. The Petitioners/Applicants were dissatisfied with the above Judgment prompting them to commence an Appeal against it before the Court of Appeal.
- c. The Petitioners/Applicants lodged a Notice of Appeal on 19th November, 2019 which was within the laid down statutory timeline.
- d. The Petitioners /Applicants proceeded to formally lodge the Appeal before the Court of Appeal on 28th October, 2020 being Eldoret COACA NO E078 OF 2020.
- e. The above-mentioned Appeal has been fixed for hearing on 8th December, 2025 which is barely 10 days away.
- f. The Petitioners'/Applicants' Counsel noted during preparation for the hearing of the Appeal that this Honourable Court had not granted leave for the filing of the Appeal prompting the need for filing of the instant Application.
- g. There bulk of jurisprudence emanating from the Court of Appeal is to the effect that Appeals from Succession matters cannot be prosecuted without leave of this Honourable Court.
- h. The Court of Appeal Rules allows for parties to seeking leave even after filing of the Appeals hence this Application is properly before this Honourable Court.
- i. There is an imminent risk that the Petitioners' Appeal will be struck out or dismissed if this Honourable Court does not grant the leave before 8th December, 2025 hence depriving the Petitioners of their fundamental rights enshrined at Articles 48 and 50 of *the Constitution* of Kenya.
- j. The delay in seeking leave to appeal was occasioned by a mistaken belief that the previous Counsel representing the Petitioners/Applicants sought and obtained leave to appeal at the time the Judgment was delivered.
- k. The lack of leave was only discovered by the Petitioners' current Counsel while going through the Court Proceedings in preparation of the Submissions to be filed before the Court of Appeal.
- l. Any failure by this Honourable Court to grant the leave sought herein will deprive the Petitioners of the opportunity to be heard by the Court of Appeal despite having an arguable Appeal and having waited for more than five years during the pendency of their Appeal.
- m. The arguability of the Appeal before the Court of Appeal was appreciated by this Honourable Court at the time of issuing an order for stay of execution and further proceedings in this cause.
- n. There are orders staying the proceedings before this Honourable Court pending hearing and determination of the Appeal hence any delay indetermination of this Application is prejudicial to all the parties.
- o. The Objectors/Respondents will not suffer any harm by the grant of the orders sought herein noting that they will have an effective opportunity to be heard by the Court of Appeal on the substance of the Appeal.
- p. The Petitioners/Applicants and their dependants will suffer irreparably if this Application is not heard urgently and orders sought granted.



3. The Application is supported by the annexed affidavit dated 26th November 2025 sworn by Eunice Chebichii Kipkosgei who averred as follows: -
- a. That I am the 1st petitioner/Applicant herein duly seized of the facts of this cause hence competent to swear this Affidavit.
 - b. That I have the express authority of the 2nd Petitioner/Applicant herein to swear this Affidavit on her behalf hence competent to do so.
 - c. That this Honourable Court rendered a Judgment on 8th November, 2019 allowing an Objection by the Objectors thereby recognizing them as beneficiaries in the estate.
 - d. That we were dissatisfied with the above Judgment prompting us to commence an Appeal against it before the Court of Appeal.
 - e. That we lodged a Notice of Appeal on 19th November, 2019 which was within the laid down statutory timeline
 - f. That we proceeded to formally lodge the Appeal before the Court of Appeal on 28th October, 2020 being ELDORET COACA NO. E078 OF 2020.
 - g. That the above-mentioned Appeal has been fixed for hearing on 8th December, 2025 which is barely 10 days away.
 - h. That our Counsel noted during preparation for the hearing of the Appeal that this Honourable Court had not granted leave for the filing of the Appeal prompting the need for filing of the instant Application.
 - i. That I am advised by our Counsel which advice I verily believe to be true that a bulk of decisions emanating from the Court of Appeal is to the effect that Appeals in Succession matters cannot be prosecuted before the Appellant Court without leave of this Honourable Court.
 - j. That I am advised by our Counsel which advice I verily believe to be true that the Court of Appeal Rules allows for parties to seek leave even after filing of the Appeals hence this Application is properly before this Honourable Court.
 - k. That there is an imminent risk that our Appeal will be struck out or dismissed if this Honourable Court does not grant the leave before 8th December, 2025 hence depriving us of our fundamental rights enshrined at Articles 48 and 50 of *the Constitution* of Kenya.
 - l. That the delay in seeking leave to appeal was occasioned by a mistaken belief that the previous Counsel representing us, Advocate Kiboi Tuwai, sought and obtained leave to appeal at the time the Judgment was delivered.
 - m. That the lack of leave was only discovered by our current Counsel while going through the Court Proceedings in preparation of the Submissions to be filed before the Court of Appeal.
 - n. That any failure by this Honourable Court to grant the leave sought herein will deprive us of the opportunity to be heard by the Court of Appeal despite having an arguable Appeal and having waited for more than five years during the pendency of their Appeal.
 - o. That the arguability of our Appeal before the Court of Appeal was appreciated by this Honourable Court at the time of issuing an order for stay of execution and further proceedings in this cause.



- p. That there are orders staying the proceedings before this Honourable Court pending hearing and determination of the Appeal hence any delay indetermination of this Application is prejudicial to all the parties.
- q. That the Objectors/Respondents will not suffer any harm by the grant of the orders sought herein noting that they will have an effective opportunity to be heard by the Court of Appeal on the substance/merits of the Appeal.
- r. That the question of leave is a procedural matter which should not be applied to outweigh the substantive justice in a matter.

Grounds of Opposition

- 4. The Application is opposed by the Respondents vide Grounds of Opposition dated 19th January 2026 which can be summarized as follows: -
 - a. Leave to appeal to the Court of appeal in succession matter is a jurisdictional necessity where there is no leave, there is no valid appeal.
 - b. The obtaining to of leave to file notice of appeal is a prerequisite and sequential, which starts with the leave itself then is the notice of appeal and there after stay granted in this proceeding is improper and needs to be vacated promptly.
 - c. There is no rule in the Court of appeal Rules 2022 which allows the seeking of leave after filling notice of appeal or the appeal itself in succession matters, the Respondent shall be moving the Court of appeal to strike out that appeal for want of leave
 - d. The grant or refusal to grant leave in a proper case is discretionary this Court cannot be called upon to exercise discretion the Appellant having slept on that rights for 5 years, that delay in itself is inordinate.
 - e. This application is a clear abuse of the process of this Honourable Court.
 - f. The application be dismissed with cost

Analysis and Determination

- 5. I have read and considered the Application, the Affidavit in support and the Grounds in opposition of the same. There are two (2) issues for determination by this Honourable Court: -
 - a. Whether this Court should grant leave to file the instant application out of time?
 - b. Whether this Court should grant leave to appeal to the Court of Appeal?

Whether this Court should grant leave to file the instant application out of time?

- 6. The jurisdiction of this Court to entertain this Application is provided for in section 47 of the [Law of Succession Act](#). In particular, this section provides as follows: -

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.



Provided that the High Court may for the purpose of this section be represented by Resident Magistrates appointed by the Chief Justice.”

7. On the other hand, Rule 73 of the Probate and Administration Rules provides that: -

“Nothing in these Rules shall limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.”
8. Section 47 of the *Law of Succession Act* thus vests this Court with wide discretion in granting protective powers for purposes of safeguarding the estate of a deceased person. The Court of Appeal in *Floris Piezzo & Another Vs TGiancarlo Falasconi (2014) eKLR*, while considering whether an injunction can issue in a Succession Cause expressed itself as follows: - “...Indeed Section 47 of the said Act gives the Court jurisdiction to entertain any application and determine any dispute under the Act and to pronounce such decree and orders as may be expedient. It cannot be said that such decrees and orders would exclude injunction orders. In other words, we are of the same view that Section 47 of the Act gives the Court all-embracing powers to make necessary orders, including injunctions where appropriate to safeguard the deceased’s estate. This section must be read together with Rule 73 of the Probate and Administration Rules which further emboldens Court’s jurisdiction to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of Court. We would imagine such orders would also include injunctive orders.”
9. The background to the application is not in dispute. This Court rendered its Judgment on 8th November 2019 allowing the objection and recognizing the Objectors as beneficiaries of the estate. The Petitioners, being dissatisfied, lodged a Notice of Appeal on 19th November 2019 and subsequently filed an appeal before the Court of Appeal on 28th October 2020 being ELDORET COACA NO. E078 OF 2020. The appeal had been fixed for hearing on 8th December 2025.
10. The Applicants invoked Article 48 on Access to Justice, Article 50 on Right to a fair hearing and Article 159(2)(d) that justice shall be administered without undue regard to procedural technicalities. Article 48 guarantees access to Courts, but such access is to be exercised within the framework of the law. It does not abrogate statutory requirements or jurisdictional thresholds. Article 50 guarantees a fair hearing. The Applicants were heard at trial and were at liberty to pursue an appeal in accordance with the law. The requirement of leave does not extinguish the right to appeal; it regulates its exercise. Article 159(2)(d) has often been misunderstood. It is not a panacea for all procedural lapses. The Supreme Court and superior Courts have consistently held that Article 159 of *the Constitution* cannot be invoked to cure substantive or jurisdictional defects. The requirement for leave to appeal, where prescribed, is not a mere technicality; it is a substantive legal threshold.
11. Be that as it may, the discretion to extend time is well settled and it must be exercised judicially. The Court must consider the length of delay, the reason for the delay, the conduct of the parties, the prejudice to the opposing party and the broader interests of justice. The Judgment in this intestate Succession Cause was delivered on 8th November 2019. The present application was filed on 26th November 2025. The delay is therefore slightly over five (5) years. The explanation advanced is that previous Counsel failed to seek leave and that the omission was only discovered by current Counsel during preparation of submissions before the Court of Appeal. This explanation does not satisfy this Court.
12. It is particularly disturbing to this Honourable Court that the Learned Counsel currently on record has been seized of this matter since 2021. From 2021 to 2025, Counsel had conduct of the appeal and had



ample opportunity to scrutinize the record and confirm compliance with all procedural prerequisites. It is inconceivable that such a fundamental requirement would remain unnoticed for nearly four years while the appeal was pending. Litigation demands vigilance. Parties and their advocates have a duty to act with diligence and procedural discipline. A delay of over five years cannot be casually attributed to oversight without demonstrating active and consistent effort to regularize the position.

13. The doctrine of inordinate delay exists to protect the integrity of the judicial process. Justice delayed without justification is justice undermined. The Respondents obtained a Judgment in their favour in 2019. They are entitled to certainty and finality. Endless procedural resurrection of concluded matters erodes public confidence in the administration of justice. In the case of *Utalii Transport Company Limited & 3 others Vs Nic Bank Limited & another* [2014] KEHC 7255 (KLR), the Court held as follows: -
 - (12) Whereas there is no precise measure of what amounts to inordinate delay. And whereas what amounts to inordinate delay will differ from case to case depending on the circumstances of each case; the subject matter of the case; the nature of the case; the explanation given for the delay; and so on and so forth. Nevertheless, inordinate delay should not be difficult to ascertain once it occurs; the litmus test being that it should be an amount of delay which leads the Court to an inescapable conclusion that it is inordinate and therefore, inexcusable. On applying Court's mind on the delay, caution is advised for Courts not to take the word "inordinate" in its dictionary meaning, but in the sense of excessive as compared to normality.
14. The Applicants invoke Articles 48 and 50 of *the Constitution*, arguing that denial of leave would impede access to justice and their right to be heard. While this Court recognizes and upholds constitutional rights, *the Constitution* is not a carte blanche for parties to disregard statutory requirements or procedural timelines. Constitutional provisions are not instruments for curing indolence. Article 159(2)(d) directs Courts to administer justice without undue regard to procedural technicalities. However, that provision does not abolish procedural law, nor does it authorize Courts to ignore inordinate delay. The requirement of diligence is not a mere technicality; it is a substantive obligation that ensures fairness to all parties.
15. The enlargement of time for an Applicant or litigant aggrieved with the decision of a trial Court is discretionary by virtue of the powers donated to a properly constituted Court under Article 50 (1) of *the constitution*. It is often stated that the discretion is unfettered but guided through certain well settled principles by the various superior Courts whose import can be drawn from the following dicta by the Court of Appeal in *Paul Wanjohi Mathenge v Duncan Gichane Mathenge* (2013) eKLR; Thus: the discretion under rule 4 is unfettered, but it has to be exercised judicially, not on whim, sympathy or caprice. I take note that in exercising my discretion I ought to be guided by consideration of the factors stated in previous decisions of this Court including, but not limited to, the period of delay, the reasons for the delay, the degree of prejudice to the Respondent and interested parties if the application is granted, and whether the matter raises issues of public importance. In *Henry Mukora Mwangi v Charles Gichina Mwangi-Civil Application No. Nai 26 of 2004*, this Court held:-³³"It has been stated time and again that in an application under rule 4 of the Rules the learned single Judge is called upon to exercise his discretion which discretions unfettered. It may be appropriate to re-emphasize this principle by referring to the decision in *Mwangi v Kenya Airways Ltd.* [2003] KLR 486 in which this Court stated:-"Over the years, the Court has, of course set out guidelines on what a single Judge should consider when dealing with an application for extension of time under rule 4 of the Rules. For instance in *Leo Sila Mutiso -vs- Rose Hellen Wangari Mwangi-Civil Application No Nai. 255 of 1997* (unreported), the Court expressed itself thus:-⁴⁰"It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the



matters which this Court takes into account in deciding whether to grant an extension of time are: first, the length of the delay; secondly, the reason for the delay; thirdly (possibly), the chances of the appeal succeeding if the application is granted; and, fourthly, the degree of prejudice to the Respondent if the application is granted."(see also the Principles in All Er 543., Agip Kenya Limited V Highlands Tyres Limited (2001) Klr 630 And Sagoo V Bhari (1990) Klr 459 Nbi Hc Elc Case NO 2058 OF 2007

16. From my reading of the facts of this case and the application at bar together with the historical litigation as between the parties the threshold of the discretion has got to be measured within the rubric of whether the delay is in excusable:
 - a. Whether the question entails the following issues
 - b. Whether the delay is intentional and contumelious
 - c. Whether the delay is an abuse of the Court process
 - d. Whether the delay gives rise to substantial risk to fair trial or cause serious prejudice to the Defendant
 - e. What prejudice will the dismissed occasion to the plaintiff
 - f. Whether the plaintiff has offered a reasonable explanation for the delay and
 - g. What the interest of justice dictates, lenient exercise of discretion
17. In the affidavit evidence offered by the Applicant, it falls short of the threshold outlined in Section 107, 108, & 109 of the Evidence Act to warrant this Court to exercise discretion to enlarge time in favour of the Applicant so that he can lodge and appeal to the Superior Court on matters duly concluded within his knowledge and his legal Counsel. Discretion of this nature must be guided by law and tailored to the specific circumstances of the case. It is a mere legal discretion to follow the course prescribed by the law and not personal preference.
18. The main object of the time and limitation prescribed in the various statute is to provide a specific time frame in which a litigant or a party can file a suit, or proceedings, claim, or for this matter and appeal in a Court of competence jurisdiction. I wonder if no such time limit is set by the law always in existence then it will lead to never ending litigation as the party or litigant or claimant, or Appellant can file a suit, a petition or proceedings or an appeal for the cause of action which was done many years back and its resurrection would be prejudicial to the fair administration of justice. This time frames prevents disturbance in Society by suppressing fraud and perjury in other words the law of limitation of time to file a suit or an appeal is aimed at protecting the lengthy process of penalizing a person or party indirectly without an offence. This is what I see as the perspective of the law on prescriptive time frames to undertake a legal cause of action against another party to vindicate certain rights which have been threatened or run the risk of being violated. First the rights which are not exercised for a long time are said to be as non-existent, and secondly the rights which are related to property rights and other human rights of significance in general should not be in a state of constant and uncertainty, doubts and suspense. The spirit and the letter of the law is that limitation is based upon a Public Policy and constitutional imperative that justice delayed is justice denied and that the lifespan of our legal remedy is impaired by an unnecessary delay which is in ordinate and inexcusable. It is for the general welfare of society and the interests of justice that a period be put to litigation by a statute or regulation. An appeal for that matter like in this case must be filed within a certain time after the Judgement or order is rendered by a trial Court or first appeal's Court.
19. In the instant case, the Court is yet to be told that there are special considerations or legal disabilities that made it impossible for the Applicant to file an appeal or lodge an application for an enlargement



of time. This is a time barred application which violates the statutory limitation period rendering it invalid and an enforceable. Following the careful analysis of the litigation history of this matter, and the consideration of the risk of injustice or prejudice to any other person concerned with this dispute I am of the view that the Applicant has not met the criteria herein as discussed elsewhere in this ruling. As a matter of emphasis, I reiterate as follows: First, the reason for the delay and its justification based on sufficient excuse being demonstrated on the part of his legal adviser is far below the required test to exercise discretion. Second, the length of the delay cannot be relatively or easily be excused. Third, the absence of compelling new evidence why the intention to appeal within the time limit was not met by the Applicant and finally, the extension of time if allowed is likely to cause prejudice and injustice to the other parties who may have a stake to this cause of action. The right of appeal provided for in [the Constitution](#) should be exercised pursuant to the jurisdictional time limit donated by the Statute applicable in Civil or Criminal Law.

20. In the circumstances, this Court finds that the delay is inordinate and inexcusable to a satisfactory degree that no judicial discretion can be exercised to grant a remedy in favour of the Applicant. Therefore, the Applicants have failed to demonstrate sufficient cause or exceptional circumstances for this Honourable Court to grant leave to file the instant Application to invoke the jurisdiction of this Court or of any other superior Court for that matter.

Whether this Court should grant leave to appeal to the Court of Appeal?

21. As per the provisions of the [Law of Succession Act](#), there is no express automatic right of appeal to the Court of Appeal. This was buttressed by the Court of Appeal in the case of Rhoda Wairimu Karanja & Another Vs Mary Wangui Karanja & Another [2014 eKLR which made the following observations with regards to appeals in succession matters against the decisions of the High Court exercising its original jurisdiction: -

“We think we have said enough to demonstrate 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. Leave to appeal will normally be granted where prima facie it appears that there are grounds which merits serious consideration. We think this is good practice that ought to be retained in order to promote finality and expedition in the determination of probate and administration disputes.”

22. As held in Rhoda Wairimu Karanja (supra), this Court can be prompted to grant the leave sought by the Applicant herein where circumstances require, such as when weighty issues arise requiring further serious judicial consideration and interrogations. If this Court declines to grant the leave sought by the Applicant, then she will be at liberty to seek the same in the appellate Court. In John Mwita Murimi & 2 Others Vs Mwikabe Chacha Mwita & Another [2019] eKLR, the Court of Appeal re-affirmed this position by holding as follows: -

“...Under the [Law of Succession Act](#), there is no express automatic right of Appeal 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...”

23. Furthermore, Section 3A of the [Appellate Jurisdiction Act](#) provides that: -

1. The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the appeals governed by the Act.



2. The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).
 3. An advocate in an appeal presented to the Court is under a duty to assist the Court to further the overriding objective and, to that effect, to participate in the processes of the Court and to comply with directions and orders of the Court.
24. This provision donates jurisdiction to the Court of Appeal to entertain appeals from decisions of the High Court. This includes Probate and Administration disputes determined by the High Court. From the facts of this case, the Applicants seek leave to appeal. In the present case, the Applicants lodged a Notice of Appeal and filed a substantive appeal without first obtaining leave of this Court. The appellate process was therefore commenced without compliance with a mandatory procedural step. The Applicants urge the Court to grant leave retrospectively, emphasizing that their appeal is arguable and that they risk being shut out from the appellate process. This Court reiterates that the right of appeal, though an important component of fair hearing under Article 50, is statutory in nature. It must be exercised within the confines prescribed by law. Where leave is required, it must be sought and obtained in a timely and lawful manner.
25. To grant leave at this stage, five years after Judgment, after the appeal has been filed and on the eve of its hearing, would amount to condoning procedural disorder and undermining the orderly administration of justice. Again, reliance is placed on Article 159 of *the Constitution*. *The Constitution* is not a carte blanche to sanitize jurisdictional lapses or to reward prolonged inaction. The Court must balance access to justice with the equally important principle of finality in litigation. Discretion is an equitable remedy. Equity aids the vigilant, not the indolent. The Applicants had sufficient opportunity between 2019 and 2025 to regularize their position. They did not do so. In the totality of the circumstances, this Court finds no basis upon which to exercise discretion in favour of the Applicants.
26. In view of the foregoing, it is my finding that the delay of over five years in seeking leave is inordinate and inexcusable, the explanation tendered is unsatisfactory, particularly in light of Counsel having been on record since 2021, Articles 48, 50 and 159 of *the Constitution* do not operate as a carte blanche to excuse indolence or cure jurisdictional defects and that the Applicants have not established sufficient cause to warrant extension of time or grant of leave. Consequently, the Summons dated 26th November 2025 is devoid of merit and is hereby dismissed in its entirety with no orders as to the costs. It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET VIA CTS THIS 18TH DAY OF FEBRUARY 2026

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R. NYAKUNDI
JUDGE

