



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

MISCELLANEOUS APPLICATION NO. E046 OF 2025

FAITH KANYOMOO M'RINGERA (Suing as the Legal Representative Administratrix of the estate of M'ringera M'Kirimania **-Deceased**.....

.....**APPLICANT**

VERSUS

SAMSON NDEREBA M'RINGERA.....

RESPONDENT

RULING

1. Before me is the applicant's Notice of Motion dated 14th May, 2025, seeking extension of time for filing an appeal on the orders issued on 4th July,2023 and for costs to be in the cause.
2. The application is based on grounds inter alia that: the orders made on 4th July,2023 included the Respondent as the beneficiary whereas he was not; the other beneficiaries did not consent and were not heard as to

confirmation of the certificate of Grant; the certificate of confirmation of grant was supposed to be as per the mediator's report dated 23.6.2023; the delay in filing appeal was because the beneficiaries were unaware of the inclusion of the Respondent until the certificate of confirmation of grant was issued on 22.12.2023; & on the face of the certificate of grant it omitted several beneficiaries including the legal administratrix.

3. In support of the application, the Applicant avers that letters of administration was made to her and her sister one Bridgit Gakii Ringera and they filed summons for confirmation and further supporting affidavit dated 28.11.2023 and that as per the said Further supporting affidavit, the respondent was not a beneficiary as he is the son to their elder sister Jennifer Karambu; that on 4th July 2023 when the matter came up for confirmation, the advocate on record was absent; that according to the mediation report dated 26.6.2023 they agreed on modality of the sharing and whether the respondent had a right by dint of being a beneficiary; that they learned on 15th April,2025 that the respondent had been included

vide orders issued on 4th July,2023 as a beneficiary when they appeared for the hearing of a revocation application; that when Hon. M. C. Nyigei perused the court file she realized Hon. T. M. Muraguri had included the respondent as a beneficiary contrary to the law and that it is on the premise that they seek to appeal.

4. In opposition, the Respondent, has sworn a replying affidavit dated 28th May,2025 wherein he avers: that he is the son of the deceased's daughter, Jennifer Karambu Ringera, and that he was taken care of by the deceased herein till his death; that prior the deceased's demise he had allocated him parcel of land where he built a permanent 3 bedroomed house, installed water and has been undertaking extensive development thereon; that after the demise of the deceased he participated in the family meeting not as the deceased's grandchild but as a dependent as the deceased had taken him to his family and was maintaining him prior to his death; that he realized the petitioners had omitted him as a beneficiary when they filed succession and thus he moved the court via summons dated 8th February,2023 seeking share of the

parcel of land that was allotted to him by the deceased, and that the matter was referred to mediation but the matter was referred back to court for determination whether he was or not a dependent and whether he had a right over the land that he was apportioned to him by the deceased; that vide a ruling delivered on 4th July,2023 the court acknowledged that he was a dependent and accordingly made a reasonable provision for him from the estate; that on 7th December,2023 the grant was confirmed based on varied settlement agreement that reasonable provision be made for him from the deceased's estate; that on 1st July,2024, the petitioners sought for revocation of grant confirmed on 7th December,2025 claiming that he was not a dependent and that he should not participate in the distribution but the court on 15th April,2025 only reviewed the confirmed grant by adding the petitioners who had been erroneously omitted from the grant and included a property that had been omitted and apprised the petitioners that it was devoid of jurisdiction to proceed with the same; that the instant application is an abuse of the court process as Section 30

of the Law of Succession Act bars any application after the grant has been confirmed; that the application is frivolous and vexatious; and that the intended appeal has no merit.

5. In the further affidavit dated 1st July, 2025, the Applicant avers that they seek to specifically appeal on whether the confirmation was done in accordance with the law and believes that she has sufficiently demonstrated that the time lapse was due to inadvertence and failure of the former counsel to attend court.
6. The Application was canvassed through written submissions.

Applicant's Submissions

7. The Applicant reiterated the averments contained in her grounds of the application and the aforementioned affidavits. She basically posits that the court erred in including the respondent as a beneficiary of the deceased's estate and that the certificate of confirmation of grant is erroneous as she is omitted as one of the deceased's beneficiaries.
8. She reiterated that they learned late about the inclusion of the respondent as a beneficiary and that the same was

occasioned by the inadvertence and failure of the previous counsel to attend court on 4th July, 2023. In support of her submissions, the Applicant relied on the case of **Nicholas Salat v Independent Electoral and Boundaries Commission & 7 others [2014] eKLR**

Respondent's Submissions

9. The Respondent referred this court to the provisions of Section 79 G of the Civil Procedure Act and Section 30 of the Law of Succession Act and submitted that whereas the court has discretion under Section 79G of the Civil Procedure Act to admit the Appeal out of time, this discretion is fettered under Section 30 of the Law of Succession Act and as such the leave to appeal out of time is unavailable to the Applicant.
10. The Respondent further submitted that the issue raised by the Applicant is a pure point of law and vide Section 30 of the Law of Succession Act, the right to challenge the court's decision is extinguished after the confirmation of the grant of representation.
11. The respondent thus prayed for dismissal of this application with costs to him.

Analysis & Determination

12. I have considered the application, affidavit in support of and in opposition to the application, the submissions and authorities relied upon. In my view, the issues that fall for determination are: -

- a) Whether the Applicant is barred by Section 30 of the Law of Succession Act from filing any application after confirmation of grant.
- b) If the answer to the above is in the negative, whether leave should be granted to the Applicant to lodge an appeal out of time.

Issue no.1

13. Section 30 of the Law of Succession Act provides as follows: -

“30. Limitation of time

No application under this Part shall be brought after a grant of representation in respect of the estate to which the application refers has been confirmed as provided by section 71.”

14. It is patent that the above section expressly limits its application to proceedings brought under Part III of the Act, which relate to claims for reasonable provision. In a persuasive authority of **Okello v Onyango [2023] KEHC 22828 (KLR)** the Court clarified that Section 30 bars applications for reasonable provision once a grant has been confirmed.
15. However, the Applicant herein is not seeking reasonable provision under Part III of the Act, but leave to appeal out of time. Such an application does not fall within the ambit of said Section 30 and is instead governed by the court's discretionary powers and the interests of justice. Consequently, the Applicant is not barred by Section 30 of the Law of Succession Act from approaching this Honourable Court for leave to appeal.

Issue no.2

16. **Section 79G of the Civil Procedure Act** provides that:
- “Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from**

such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order:

Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.”

17. **Section 95 of the Civil Procedure Act** provides thus: -

“Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Act, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.”

18. The applicant approaching the Court under this section must demonstrate **“good and sufficient cause”** for not filing the appeal in time. In **Thuita Mwangi vs Kenya Airways [2003] eKLR, the** Court of Appeal while considering Rule 4 of the Court of Appeal Rules which was in *pari materia* with Section 79G of the Civil Procedure Act,

reiterated its decision in **Mutiso v Mwangi [1997] KLR 630** as follows:

“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 general the matters which this court takes into account in deciding whether to grant an extension of time are first, the length of delay; secondly, the reason for the delay; thirdly (possibly) the chances of appeal succeeding if the application is granted; and fourthly, the degree of prejudice to the Respondent of the application is granted.”

19. While the discretion of the court is unfettered, the applicant is obligated to adduce material upon which the court should exercise its discretion, or in other words, the factual basis for the exercise of the court’s discretion in his favor.
20. The Court of Appeal in **Aviation Cargo Support Limited v St. Mark Freight Services Limited [2014] eKLR** held as follows:

“For the Court to exercise its discretion in favour of an applicant, the latter must demonstrate to the court that the delay in lodging the record of appeal is not inordinate and where it is inordinate the applicant must give plausible explanation to the satisfaction of the court why it occurred and what steps the applicant took to ensure that it came to court as soon as was practicable.”

21. It is thus clear that even though there is no maximum or minimum period of delay set by the law, anyone seeking this relief must satisfactorily explain the cause of the delay. (See also **Andrew Kiplagat Chemaringo vs Paul Kipkorir Kibet (2018) eKLR**.)
22. The Supreme Court in the case of **Nicholas Kiptoo Korir arap Salat v IEBC and 7 Others (supra)** set out the principles applicable in an application for leave to appeal out of time. The Court state *inter alia* that:

“The underlying principles a court should consider in exercise of such discretion include;

- 1. Extension of time is not a right of any party. It is an equitable remedy that is only available to a deserving party at the discretion of the court;**
- 2. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;**
- 3. Whether the court should exercise the discretion to extend time is a consideration to be made a case- to- case basis;**
- 4. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;**
- 5. Whether there will be any prejudice suffered by the Respondent if the extension is granted;**
- 6. Whether the application has been brought without undue delay.**

23. These principles were also considered in the earlier case of **Leo Sila Mutiso vs Rose Hellen Wangeri Mwangi Civil Appeal 255/ 1997**, where the court held as follows: -

“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.”

24. These principles were also reiterated in **First American Bank of Kenya Ltd vs Gulab P. Shah & Others HCC 2255/2000 [2002] IEA 65** and listed them as follows: -

- The explanation if any, for the delay;

- The merits of the contemplated action, whether the appeal is arguable;
- Whether or not the respondent can be adequately compensated in costs for any prejudice that may be suffered as a result of the exercise of discretion in favour of the applicant.

25. Section 50 of the Law of Succession, Cap. 160 of the Laws of Kenya provides thus:

“50. Appeal to High Court

1. An appeal shall lie to the High Court in respect of any order or decree made by a Resident Magistrate in respect of any estate and the decision of the High Court thereon shall be final.

2. An appeal shall lie to the High Court in respect of any order or decree made by a Kadhi’s Court in respect of the estate of a deceased Muslim and, with the prior leave thereof in respect of any point of Muslim law, to the Court of Appeal.

26. The timeframe for filing an appeal to the High Court is not stipulated. I concur with the position taken by the court in **Re Estate of the Nathan Kiio Itinga (Deceased) (Succession Cause E002 of 2021) [2022] KEHC 11638 (KLR) (22 July 2022) (Ruling)** regarding period within which to file an appeal. The court held;

“12. It thus follows that the High Court has jurisdiction to entertain an appeal from any order or decree of the magistrates’ court in succession proceedings. I note that the section does not stipulate a time frame for filing an appeal. However, I take it that an appeal should have been filed within 30 days.”

27. I will therefore proceed to determine whether the Applicant has advanced plausible grounds for delay in filing the appeal.

28. The impugned orders were issued on 4th July, 2023 while the instant application was filed on 14th July, 2025, the delay of approximately 2 years and 10 days. The reason advanced by the applicant for the delay is that they were not aware of the inclusion of the Respondent as a

beneficiary until a certificate of confirmation of grant was issued on 22nd December, 2023. However, the Applicant has not offered any explanation for the further delay of about 1 year, 6 months and 22 days that elapsed after becoming aware of the Respondent's inclusion. In the absence of this explanation for the delay, I find that the delay was inordinate.

29. The Applicant further attributes the delay to their counsel's failure to attend court on 4th July 2023 when the matter was set for confirmation of grant and to inform them of the proceedings thereafter. However, it is trite law that a litigant at all times must monitor his/her case. In **Bi-Mach Engineers Limited vs James Kahoro Mwangi [2011] eKLR** the Court of Appeal held:

“The applicant had a duty to pursue his advocates to find out the position on the litigation but there is no disclosure that the applicant bothered to follow up the matter with his erstwhile advocates. It is not enough simply to accuse the advocate of failure to inform as if there is no duty on the client to pursue his

matter. If the advocate was simply guilty of inaction, that is not an excusable mistake which the court may consider with some sympathy. The client has a remedy against such an advocate. It would also appear that there was unnecessary and unexplained delay after 30th December, 2010 and the filing of the motion on 2nd February, 2011. Without explanation, there would be no basis for the exercise of any discretion. The filing of a notice of appeal is a simple and mechanical task and could even have been done on 30th December, 2010 or soon after the applicant became aware of the judgment. Such conduct militates against the overriding objective and the principles stated above.”

30. The Applicant has not provided any explanation for her failure to follow up on this matter.
31. However, I note that the determination of the rightful beneficiaries is a triable issue that must be decided on its

merits. I have also considered that granting the Applicant leave will not occasion any prejudice to the Respondent.

32. In light of the above and in the interests of justice, I exercise my discretion and grant prayer 2 of the Application. The applicant is to file and serve the Memorandum of Appeal within 15 days from the date of delivery of this ruling, failing which the leave shall lapse automatically.

33. There applicant shall bear the costs of the application.

Dated, Signed and Delivered at Meru this 13th day of February, 2026.

**H. M. NYAGA,
JUDGE.**

In the presence of;

Court Assistant - Zakayo

Applicant - no appearance

Respondent - Mr. Muriuki