

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
SUCCESSION CAUSE NO. 23 OF 1999

IN THE MATTER OF THE ESTATE OF THOMAS KHONGO (DECEASED)

RULING

1. On 26th April 2024, I delivered a ruling herein, wherein I granted leave, of 30 days, to Gladys Auma Mugeni, to file an appeal against a decision made herein on 16th June 2022.
2. Subsequent to that grant of leave to appeal, a series of applications have been filed. There is an application, dated 8th January 2025, by Dickson Wafula Abayo, seeking that the orders of 26th April 2024 be vacated, on grounds that an appeal had not been filed, within the 30 days given in those orders. That application is still pending. The second application is dated 9th June 2025, it sought that Mr. Onsongo, for Gladys Auma Mugeni, be allowed to cease acting. That application was withdrawn on 9th July 2025. Another application was filed, dated 30th September 2025, seeking substitution of a party, and extension of the order of 26th April 2024. That is the application which should be the subject of this ruling.
3. The application, of 30th September 2025, attracted a response from Dickson Wafula Abayo. He did not oppose the substitution, but was opposed to the extension of time.
4. As the prayer for substitution is not opposed, I shall allow it.
5. That leaves me with the prayer for extension of time to file appeal. In my orders of 26th April 2024, I extended time for filing appeal, by 30 days. 30 days, from 26th April 2024, expired on or about 26th May 2024. The application, dated 30th September 2025, indicates that, as at that date, 30th September 2025, no appeal had been filed. No plausible reason has been given for that extended delay, of 16 months. The discretion to extend time can only be triggered by a plausible explanation for the delay. Time to file appeal was extended from July 2022, in April 2024, for 30 days. The applicant did not take advantage of that extension, and she is now seeking a further extension, without giving tangible reasons. That is how abuse of

court process looks like. I am not persuaded that I should exercise discretion, for a second time, to extend time for filing appeal.

6. My declining to exercise that discretion should pave way for me to consider the application, dated 8th January 2025. That application was needless. It should not have been filed. It invites me to vacate the orders of 26th April 2024, because the time for filing appeal had lapsed before the contemplated appeal was filed. The orders of 26th April 2024 are no longer valid, they lapsed. Orders that have lapsed would not be available for vacating, because they ceased to exist, once they lapsed. There would be nothing to vacate. It is because they lapsed, and ceased to exist, that the application, dated 30th September 2025, was filed, essentially to validate the said lapsed orders, by way of reviving or reinstating or breathing life into them, through extension.
7. I have said enough. The application, dated 30th September 2025, is allowed, to the extent of the substitution sought, and it is dismissed, to the extent of extension of time to file appeal. The application, dated 8th January 2025, is struck out. Nothing bars the parties from having the certificate of confirmation of grant, dated 28th March 2023, implemented. Each party shall bear its own costs. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA,
THIS 9TH DAY OF MARCH 2026.**

**W MUSYOKA
JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Onsongo, instructed by Obwoye Onsongo & Company, Advocates for Gladys Auma Mugeni and Florence Nabwire Ombito.

Ms. Achala, instructed by Abalo & Company, Advocates for Dickson Wafula Abayo.