



**Chege v Wanyeki & 2 others (Family Miscellaneous Civil Case
E017 of 2025) [2026] KEHC 3962 (KLR) (16 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3962 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
FAMILY MISCELLANEOUS CIVIL CASE E017 OF 2025
DKN MAGARE, J
MARCH 16, 2026**

BETWEEN

JAMES MAINA CHEGE APPLICANT

AND

JULIA WANGUI WANYEKI 1ST RESPONDENT

JOEL GITAHI GACHAU 2ND RESPONDENT

HENRY MWANGI WAMBUGU 3RD RESPONDENT

RULING

1. The matter is for leave to appeal out of time, among other prayers, that is:
 1. Spent.
 2. That this application be heard and stay of execution of the Honourable Court's Ruling dated 4/7/2024 in Mukurweini Succession Cause No. 12 of 2018 Julia Wangui Waiyaki -vs- James Maina Chege & Joel Gitahi Chege be granted exparte in the 1st instance pending inter-parties hearing and determination of this application.
 3. That this honourable Court be pleased to enlarge time and grant the Applicant leave to file an appeal out of time against the Ruling dated 4/7/2024 in Mukurweini Succession Cause No. 12 of 2018 Julia Wangui Waiyaki -vs- James Maina Chege & Joel Gitahi Chege.
 4. That there be a stay of execution of the aforesaid ruling pending the hearing and determination of such appeal as may be preferred against the ruling upon leave being granted by this Honourable Cort.
 5. That the Honourable Court be pleased to order/direct that the status quo of the subject suit land no Githi/Igana/359 be maintained.



6. That the Honourable Court outrightly issue orders to the Respondent halting/estopping the transmission and transfer process of the subject suit land Githi/Igana/359.
 7. That costs of this application be provided for.
2. The applicant indicated that they were not aware of the judgement. A perusal shows that the ruling was delivered on 4/07/2024. It is indicated to have been uploaded on 29.10.2024.
 3. There was a three-month delay in uploading the judgment. However, no application was made until 21.07.2025, 12 months later. I must be recalled that the factors to consider in dealing with such an application are:
 - a. The length of delay.
 - b. The reason for delay.
 - c. The animus of the applicant.
 - d. The prejudice to the Respondent.
 4. The Applicant has not explained the delay. It is my considered opinion that the 4 factors above are sequential. Therefore, one must fulfil each as you move to the next. If the delay is inordinate, it may not be necessary to go to the reason for delay. When the delay is reasonable, there must be a real and genuine reason for delay. Where there is doubt, either way, the court can then exercise discretion one way or another. The court cannot find that the delay is inexcusable, inordinate, and no reason is given, and then, out of sheer whimsy and fiat, extend time. That makes litigation unpredictable and unending.
 5. There are a number of factors to consider in extending time. Waki, JA in Seventh Day Adventist Church East Africa Ltd. & Another vs. M/S Masosa Construction Company Civil Application No. Nai. 349 of 2005 held that:

“As the discretion to extend time is unfettered, there is no limit to the number of factors the Court would consider so long as they are relevant; the period of delay, (possibly) the chances of the appeal succeeding if the application is granted, the degree of prejudice to the Respondent if the application is granted, the effect of the delay on public administration, the importance of compliance with the time limits, the resources of the parties, whether the matter raises issues of public importance are all relevant but not exhaustive factors...In an application for extension of time, each case must be decided on its own peculiar facts and circumstances and it is neither feasible nor reasonable to lay down a rigid yardstick for measuring periods of delay as explanations for such delays are as many and varied as the cases themselves...The ruling striking out the appeal is not only necessary for exhibiting to the application for extension of time but also for consultations between the applicant’s counsel and their clients and the fact that the ruling was returned to Nairobi for corrections is a reasonable explanation for the delay... Where the Respondent has already recovered all the decretal sum and costs attendant to the litigation, the right of appeal being a strong right which is rivalled only to the right to enjoy the fruits of judgement, no prejudice would be caused to the respondent who has enjoyed his rights in full if an opportunity is given to the applicants to enjoy theirs too, even if it is on a matter of principle.”



6. The Supreme Court of Kenya decision (M.K. Ibrahim & S.C. Wanjala SCJJ) in Nicholas Kiptoo Arap Korir Salat vs Independent Electoral and Boundaries Commission & 7 others [2014] eKLR where the learned Judges held as follows:

- “(1) Extension of time is not a right of a 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 on a case-to-case basis.
 - (4) Whether there is reasonable reason for the delay. The delay should be explained to the satisfaction of the court.
7. An application for extension of time, where the Court is being asked to exercise discretion, there must be some material before the Court to enable its discretion to be so exercised. In *Dilpack Kenya Limited v William Muthama Kitonyi* [2018] eKLR, Odunga J, as he then was, observed that:

“In an application for extension of time, where the Court is being asked to exercise discretion, there must be some material before the Court to enable its discretion to be so exercised. Once there is noncompliance, the burden is upon the party seeking indulgence to satisfy the court why the discretion should nevertheless be exercised in his favour and the rule is that where there is no explanation, there shall be no indulgence. See *Ratman vs. Cumarasamy* [1964] 3 All ER 933; *Savill vs. Southend Health Authority* [1995] 1 WLR 1254 at 1259.”

8. Further, this Application was filed about one year after the delivery of the impugned Judgment. The Applicant was under a duty to show the reasons for the delay. However short the period of delay, it must be explained. The court was not given a satisfactory explanation for the delay. In *Alfred Iduvagwa Savatia vs Nandi Tea Estate & another* [2018] eKLR J. Mohammed JA. cited *Aganyanya, JA in Monica Malel & Another V. R, Eldoret Civil Application No. Nai 246 of 2008* where the Learned Judge stated;

“When a reason is proposed to show why there was a delay in filing an appeal it must be specific and not based on guess work as counsel for the applicants appears to show the applicants are not quite sure of why the delay in filing the notice of appeal within the prescribed period occurred, which amounts to saying that no valid reason has been offered for such delay.”

9. Section 79 G of the *Civil Procedure Act* provides as doth:

“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.”

10. The next question is whether, if the court were to exercise discretion in favor of the applicant, there is anything to hear. There is no memorandum of appeal filed showing the grounds of appeal. However, I asked the applicant to explain to the court the grounds they are challenging the decision. The only issue is that the estate below was interstate. The applicant wished to exclude married daughters. on the basis of an alleged wish by the deceased. This wish does not reach the standard of a will. There is really nothing to adjudicate as to the deceased’s wish. That wish is not documented, and there is no basis upon which to exclude daughters in an intestate succession.
11. There is nothing to hear. It serves no purpose to grant leave to appeal and then summarily reject the appeal under section 79B of the Civil Act. The gold standard for interstate succession is *Rono v Rono & another* [2005] KECA 326 (KLR), where the court of appeal [PN Waki, RSC Omolo & EO O’Kubasu, JJA] held as follows:

While I do not doubt the discretion donated by the Act in matters where dependants seek a fair distribution of the deceased’s net estate I think the discretion, like all discretions exercised by courts, must be made judicially or to put it another way, on sound legal and factual basis. The possibility that girls in any particular family may be married is only one factor among others that may be considered in exercising the court’s discretion. It is not a determining factor. In this particular case however, I find no firm factual basis for making a finding that the daughters would be married. As shown by the undisputed facts above, all except one were unmarried or divorced in 1994 and were advanced in age. Eleven years later when this appeal was heard, there was no evidence that the situation had changed. It is also an undisputed fact that the deceased treated all his children equally and never discriminated between them on account of sex. It is a factor in my view that was not sufficiently considered although it resonates with the noble notions enunciated in our Constitution and international laws. The Respondents themselves clearly recognized and honoured the wishes of the deceased when they proposed to give 14 acres of the land to each daughter of the deceased. I find no justification for the superior court whittling that proposal down to 5 acres to each daughter. More importantly, section 40 of the Act which applies to the estate makes provision for distribution of the net estate to the “houses according to the number of children in each house, but also adding any wife surviving the deceased as an additional unit to the number of children.” A “house” in a polygamous setting is defined in section 3 of the Act as a “family unit comprising a wife ... and the children of that wife”. There is no discrimination of such children on account of their sex.

12. There are no grounds disclosed in the appeal. It is not only that there is no draft memorandum of appeal on the issues raised, but there is nothing to go on trial. The application is not merited and is accordingly dismissed.

Determination

13. In the upshot, I make the following orders: -
 - a. The application dated 21-07-2025 is accordingly dismissed, each party to bear its own costs.
 - b. The file is closed.

DELIVERED, DATED AND SIGNED AT NYERI, VIRTUALLY ON THIS 16TH DAY OF MARCH, 2026. JUDGEMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.



KIZITO MAGARE

JUDGE

In the presence of:

Mathaiya Baru for the Applicant

No Appearance for the Respondents

Court Assistant – Michael / Martin

