

**IN THE COURT OF  
APPEAL AT  
NYERI**

**(CORAM: KANTAI, J.A. (IN CHAMBERS))**

**CIVIL APPEAL (APPLICATION) NO. 201 OF  
2024**

**BETWEEN**

**PETER MURIITHI KIBARA.....APPELLANT**

**AND**

**STANLEY MARING KIHARA.....RESPONDENT**

*(Being an application for leave to regularize the appeal/deem appeal as properly filed against the Ruling and Order of the High Court at Kerugoya delivered on 9<sup>th</sup> August, 2024*

*in*

***H.C. Succ. Cause No. 964 of 2013.)***

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**RULING**

The applicant **Peter Muriithi Kibara** has approached the court by motion on notice brought under **Section 3A Appellate Jurisdiction Act, Section 3 Judicature Act, Rules 1(2), 4 and 47 the Court of Appeal Rules, 2010** and various articles of the **Constitution of Kenya 2010** for orders in the main that the court deem the appeal as properly filed notwithstanding that the leave to appeal was obtained after the appeal was filed and admit the supplementary record of appeal to annex the order granting leave to appeal or in the alternative this Court do grant the

applicant leave to file and serve the notice of appeal and record of appeal afresh out of time.

It is explained in grounds in support of the motion and in the applicant's supporting affidavit that the relevant estate is that of his (the applicants) father, that this Court delivered a judgment on 9<sup>th</sup> August, 2024 distributing the estate to only one (1) house; that the applicant was dissatisfied with the judgment and filed a notice of appeal; that the applicant had not sought or obtained leave to appeal; that by the time of dismissal of the application, he had already filed an appeal. He further says that he went back to the High Court and obtained leave to appeal; that the earlier failure to obtain leave to appeal was through inadvertent mistake; that he should be allowed time to regularize the anomaly.

In a replying affidavit the respondent Stanley Maringa Kibara says that the applicant did not seek or obtain leave to appeal from the High Court after ruling had been delivered in Kerugoya High Court Succession Cause No. 94 of 2013 in the presence of all the parties; that leave was later granted on 23<sup>rd</sup> October, 2025, that there is no satisfactory explanation for the applicant to have filed a defective appeal; that he will suffer prejudice as beneficiaries of the estate of the deceased have already received resultant titles; that the application should be dismissed.

I have considered the application and submissions made. The principles that apply in an application for leave to extend time under rule 4 of our rules were well laid down in the officiated oft cited case of **Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi, Civil Application Nai. 251 of 1997** states 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 stated 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."***

The applicant herein says that after the High Court of Kenya at Kerugoya delivered a ruling on 9<sup>th</sup> August, 2024, he immediately lodged a notice of appeal to challenge that decision and he proceeded to file a record of appeal and that it was later required that he realized to have sought and obtained leave to appeal a decision of a Succession Court; that upon such realization he went back to High Court and obtained leave to appeal. I have seen an order issued by Muriithi, J. on 28<sup>th</sup> October, 2025 granting the applicant leave to appeal. Considering the events as they unfolded, where the applicant freely admits that failure to obtain leave was through inadvertent mistake, I do not think that there is unreasonable delay in those circumstances. I have perused Memorandum of Appeal and I think that there are reasonable, arguable points raised on appeal.

I take the view that the applicant is entitled in a situation like this one where he has successfully obtained leave to appeal to have his day and be heard probably finally by this Court. For all those reasons I am prepared to exercise discretion in the

applicant's

favour. I grant the applicant leave to file notice of appeal within

seven (7) days of today and to file record of appeal fourteen (14) days thereafter. Let costs of this motion be in the appeal.

**Dated and delivered at Nyeri this 25<sup>th</sup> day of March, 2026**

**S. ole KANTAI**

.....  
..... **JUDGE  
OF APPEAL**

*I certify that this is  
a true copy of the  
original*

***Signed***  
**DEPUTY REGISTRAR**

