



REPUBLIC OF KENYA



**Wachira v Wachira & 4 others (Civil Application E186 of 2025)
[2026] KECA 726 (KLR) (10 April 2026) (Ruling)**

Neutral citation: [2026] KECA 726 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E186 OF 2025
DK MUSINGA, JA
APRIL 10, 2026**

BETWEEN

EDWARD THIONG’O WACHIRA APPLICANT

AND

MICHAEL WANJOHI WACHIRA 1ST RESPONDENT

SYLVIA MUTHONI WACHIRA 2ND RESPONDENT

HANNAH WANJIRU WACHIRA 3RD RESPONDENT

MARGARET WAKONYO 4TH RESPONDENT

BENJAMIN NJOGU 5TH RESPONDENT

*(Being an application for extension of time to file an appeal from the
Ruling/Orders of the High Court of Kenya at Nairobi (Ali-Aroni, J.)
delivered on 23rd December 2020 in Succession Cause No. 105 of 2020)*

RULING

1. The applicant’s application dated 24th March 2025 seeks extension of time to file an appeal from the Ruling of Ali-Aroni, J. that was delivered on 23rd December 2020 in Succession Cause No. 105 of 2020.
2. In his affidavit in support of the application, Edward Thiong’o Wachira, the applicant, who is self-represented, states that he is making this application in his own interest and in the interest of the 1st, 2nd and 3rd respondents. He states, inter alia, that on 23rd December 2020, Ali-Aroni, J. dismissed the 1st, 2nd and 3rd objectors’ petitions for letters of administration and allowed the said objectors’ oral applications for leave to appeal; that the said objectors subsequently filed and served notice of appeal together with a request for a certified copy of the typed proceedings; that on 16th March 2022 the petitioners notified the objectors that the matter had been fixed for directions on 21st June 2022; that on



- 25th April 2022 the Deputy Registrar provided the applicant with the certified copies of proceedings, which proceedings did not indicate that leave to appeal was granted to the 1st, 2nd and 3rd objectors; that the prevailing jurisprudence at the time was that in succession matters, there is no automatic right of appeal without leave of the court, and therefore on 16th May 2022, the applicant filed an application seeking amendment/correction of the proceedings to show that leave to appeal was granted to the 1st, 2nd and 3rd objectors on 23rd December 2020.
3. The applicant further states that the application for amendment was dismissed on 28th September 2023 and on 17th April 2024 he lodged an appeal, to wit, Civil Appeal E284 of 2024 that is pending hearing before this Court; that on 28th January 2025 the applicant received an email from the National Council for Law Reporting with reference to a decision of this Court in *Dada vs Dada & 3 Others* Civil Appeal No. E090 of 2021 to the effect that decisions made under the succession court are not subject to leave requirements prescribed by the Civil Procedure Rules, unless expressly so provided, and therefore, in his view, the provision of rule 91(2) of this Court's Rules no longer applied to his intended appeal.
 4. The applicant believes that he has an arguable appeal; that his application has been made without unreasonable delay, and that he has exercised all due diligence in pursuit of his cause.
 5. The applicant concludes by stating that the 4th and 5th respondents shall not suffer any prejudice if his application is allowed, whereas the applicant together with the 1st, 2nd and 3rd respondents stand to suffer substantial and irreparable loss if the orders sought are not granted.
 6. The 4th and 5th respondents oppose this application. In a replying affidavit sworn by Margaret Wakonyo, the 4th respondent, with authority of the 5th respondent, the 4th respondent states, inter alia, that the ruling of *Ali-Aroni, J.* emanated from the applicant's petition for letters of administration allegedly relating to trust property dated 20th April 2020 which they opposed; that after delivery of the impugned ruling the applicant filed a notice of appeal on 23rd December 2020 and he applied for certified copies of proceedings on the same day, which were furnished to him on 25th April 2022; that there was no need for leave to appeal against the impugned decision and therefore no plausible reason or explanation has been given for the delay in filing an application for leave to file the record of appeal out of time, which is now over six (6) years out of time.
 7. The 4th respondent argues that the applicant does not deserve the exercise of this Court's discretion in his favour owing to the dilatory and inexcusable conduct in failing to file an application for leave to appeal in time if he believed that the same was necessary. She emphasises that typed proceedings were supplied to the applicant on 25th April 2022 and therefore the record of appeal ought to have been prepared and filed much earlier.
 8. The 4th and 5th respondents believe that the applicant has not come to Court with clean hands, and is not acting in good faith as his intention is to delay the hearing of the main petition in Nairobi High Court Succession No. 105 of 2020. They believe that the intended appeal has no likelihood of success.
 9. The applicant and the respondents filed submissions in support of their respective arguments, which I have considered.
 10. In an application for extension of time under rule 4 of this Court's Rules, the Court exercises its unfettered discretion which must be done judicially, guided by various principles among them being, the length and reason for the delay, the chances of success of the intended appeal, and the degree of prejudice that the respondent is likely to suffer if the application is granted. See *Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi* [1999] 2EA 331.



11. It is not in dispute that this application was filed nearly four (4) years after the proceedings were supplied to the applicant.

The applicant argues that the prevailing jurisprudence at the time was that in succession matters there was no automatic right of appeal and so he believed that he required leave of this Court to appeal. Although the applicant faults the trial court for failing to indicate in the proceedings that it had granted leave to appeal, which caused him to file application for correction of the proceedings, that application was dismissed way back on 28th September 2023. However, the applicant waited until 17th April 2024 to lodge Civil Appeal No. 284 of 2024. That was a period of nearly 7 months. No reason was given for that inordinate delay.

12. The applicant states that on 28th January 2025 he learnt from this Court's decision in Dada vs Dada & 3 Others (supra) that the Court had lifted the requirement for leave to appeal in succession matters. That being the case, he still waited until 24th March 2025 when he filed this application. The applicant did not require certified copies of the orders in Dada vs Dada & 3 Others to file his application because it was not the matter in issue.

13. All in all, there has been inordinate delay on the part of the applicant, which delay has not been well explained.

14. I believe in the wider interests of justice, this application for extension of time should be disallowed so that the substantive matter that is pending before the High Court, Succession No. 105 of 2020, is heard and disposed of expeditiously. Consequently, I hereby dismiss this application. Each party shall bear its own cost of the application.

DATED AND DELIVERED AT NAIROBI THIS 10TH DAY OF APRIL 2026.

D. K. MUSINGA (PRESIDENT)

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.

