



REPUBLIC OF KENYA



**In re Estate of Margaret Wambui Kimani & Joseph Mbugua Murui (Deceased) (Family Miscellaneous Application E015 of 2025) [2026] KEHC 6332 (KLR) (7 May 2026) (Ruling)**

Neutral citation: [2026] KEHC 6332 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
FAMILY MISCELLANEOUS APPLICATION E015 OF 2025**

**FN MUCHEMI, J**

**MAY 7, 2026**

**IN THE MATTER OF THE SUCCESSION CAUSE NO. 682 OF 2013  
IN THE MATTER OF THE ESTATE OF MARGARET WAMBUI KIMANI (DECEASED)**

**BETWEEN**

**NAOMI WANJIKU WAMBUI ..... 1<sup>ST</sup> APPLICANT**

**MILKAH WANJIRU WAMBUI ..... 2<sup>ND</sup> APPLICANT**

**AND**

**EUNICE WANJIRU MURIU ..... RESPONDENT**

**RULING**

1. The application dated 29<sup>th</sup> May 2025 seeks for orders of leave to file an appeal out of time against the ruling in Thika CM Succession Cause No. 682 of 2013 delivered on 25<sup>th</sup> November 2021.
2. The respondent opposed the application and filed a Replying Affidavit dated 9<sup>th</sup> July 2025.

**Applicants' Case**

3. The applicants state that they filed objection proceedings dated 20<sup>th</sup> September 2021 resulting to the ruling delivered on 25<sup>th</sup> November 2021. The applicants state that they are aggrieved by the said ruling and desire to file an appeal but the time within which to file an appeal has lapsed. The applicants argue that the delay was caused by their attempt to pursue an out of court settlement with the representatives of the estate of Joseph Mbugua Muriu.

**The Respondent's Case**

4. The respondent states that she is the petitioner in HC P&A/817/2019 Re Estate of Joseph Mbugua Muriu. The respondent states that the applicants have a track record of indolence with regards to the



matter as that is not the first time they have inordinately delayed in taking action on their alleged rights only to give flimsy excuses as to their lethargy.

5. The respondent avers that the grant of letters of administration for the Estate of Margaret Wambui Muriu was issued on 9<sup>th</sup> December 2013 and confirmed on 14<sup>th</sup> February 2014 yet the applicants protested to the said grant 7 years later without any reasonable excuse for their delay. Consequently, the impugned ruling directing them to file the necessary application before the High Court Succession Cause No. 817 of 2019 was issued on 25<sup>th</sup> November 2021, 4 years later and the applicants are currently offering unjustified reasons for their inexcusable delay in filing the appeal within the requisite period.
6. The respondent states that no settlement discussions were ever entered into and the applicants only requested the court in December 2024 to initiate out of court settlements to avoid dismissal of their protest. Further the respondent states that the applicants are currently still pursuing a protest in the High Court in Succession Cause No. 817 of 2019 while commencing the appeal herein. The applicants have an Affidavit of Protest slated for hearing on 3<sup>rd</sup> December 2025 thus they are forum shopping which is an abuse of the court process.
7. The respondent states that the delay is inordinate and cannot be justified as it has been over four years since the impugned ruling. The respondents further state that the applicants have demonstrated indolence and they are misleading the court in claiming that they have been pursuing an out of court settlement. Further, the said reason does not constitute a valid reason for their failure to file an appeal within the statutory time limit.
8. The respondent states that the applicants are not beneficiaries or rightful heirs of the estate of Margaret Wambui Kimani which was settled approximately 12 years ago. Neither are the applicants beneficiaries of her late husband Joseph Mbugua Muriu who was the sole beneficiary of Margaret's estate as per the grant of letters of administration issued on 9<sup>th</sup> December 2013. The respondent further states that the applicants have no legal or equitable interest in the estate of Margaret Wambui Kimani and their attempt to challenge the grant issued to Joseph Mbugua Muriu is baseless and without merit.
9. The respondent further states that the applicants had previously filed an objection in HC. P & A No. 817 of 2019 against the estate of Joseph Mbugua Muriu based on falsehoods claiming entitlement to the estate, which they later retracted, further evidencing their propensity to advance unmeritorious and dishonest claims. The respondent further argues that the ruling they seek to appeal dismissed their summons for revocation of the grant to Joseph Mbugua Muriu that it was too late to revoke the grant since much time had passed and proceedings at the High Court regarding his estate were already underway.
10. The respondent states that granting the orders sought would cause unnecessary disruption and confusion especially since the estate of Joseph Mbugua Muriu has already been administered separately under Succession Cause No. 817 of 2019. Further, the applicants' failure to provide a credible explanation for their over four year delay coupled with the lack of merit in their appeal does not meet the threshold required for the court to exercise its discretion in their favour.
11. The applicants filed a Further Affidavit dated 14<sup>th</sup> August 2025 and state that on 2<sup>nd</sup> February 2021, they learnt through one of their relatives that the respondent, the wife to their late brother had filed succession proceedings in respect of his estate in the High Court at Nairobi vide Succession Cause No. 817 of 2019. Upon perusal of the documents, they learnt that grant of letters of administration was made to the respondent on 3<sup>rd</sup> March 2020 but the said grant had not been confirmed. The respondents also learnt that their mother's Margaret Wambui Kimani properties were listed among those in his estate without their consent as beneficiaries or dependents.



12. The applicants state that they also learnt that their late brother had commenced a fraudulent process of succession at the Chief Magistrate's Court in Thika being Succession Cause No. 682 of 2013 Re Estate of Margaret Wambui Kimani without involving all the beneficiaries with the sole aim of disinheriting them. The applicants then instructed their advocates to file an affidavit of protest against the confirmation of the said grant in the High Court in Succession Cause No. 817 of 2019 and file objection proceedings for revocation of grant in CM Succession Cause no. 682 of 2013.
13. The applicants argue that the allegations of indolence and lethargy on their part are mischievous, baseless and calculated to mislead the court as they took steps and promptly moved to challenge the said grants and further their affidavit of protest is slated for hearing on 2<sup>nd</sup> December 2025. The applicants state that the delay was caused by legitimate and unavoidable circumstances including pursuing an out of court settlement with the representatives of the Estate of Joseph Mbugua Muriu and other family members with a view to amicably resolving the matter and preserving the family harmony.
14. The applicants state that the said settlement efforts had been conducted informally over time but bore no fruits after the lower court's ruling. The oral request made in court to initiate a formal settlement process was a last good faith attempt to reach a middle ground. However the respondent declined to engage meaningfully instead insisting that they were strangers and expressing willingness to pay them some money through intermediaries and have them vacate from within the estate.
15. The applicants aver that they are 15 properties that belonged to their late mother which are enlisted by the respondent in the inventory of the assets of their deceased brother.
16. Parties put in written submissions.

### **The Applicants' submissions**

17. The applicants rely on Section 79G of the *Civil Procedure Act* and the case of Nicholas Kiptoo arap Korir Salat v IEBC & 7 Others (2014) eKLR and submits that the 30 day limit for filing an appeal does not oust the jurisdiction of this court under Section 76 of the *Law of Succession Act* to revoke a grant obtained fraudulently or through concealment of material facts at any time. The applicants further refer to the case of Matheka & Another v Matheka [2005] 2 KLR and submit that courts have emphasized that revocation under Section 76 is not subject to limitation of time because the jurisdiction of the probate court is to ensure estates are distributed lawfully.
18. The applicants submit that the delay was not inordinate and arose from circumstances beyond their control. Further they argue that the delay is explainable and not actuated by negligence or bad faith. To support their contentions, the applicants refer to the case of Leo Sila Mutiso v Rose Hellen Wangari Mwangi (1999) 2 EA 231.
19. The applicants submit that the ruling of the subordinate court is erroneous in law and fact for reasons that even after the court made a finding that the grant was procured through misrepresentation and leaving them out who are the children of the deceased, it still failed to revoke the grant issued. The applicants rely on Section 76 of the *Law of Succession Act* and the case of Re Estate of M'wongo Kichiu (Deceased) KEHC 2958 KLR and submit that the lower court was duty bound to revoke the grant as it was procured through concealment of material facts thereby denying them their rightful inheritance.

### **The Respondent's Submissions**

20. The respondent relies on Section 79G of the *Civil Procedure Act* and the cases of Diplack Kenya Limited v William Muthama Kitonyi [2018] eKLR; Nicholas Kiptoo Korir arap Salat v IEBC & 7 Others [2014] eKLR and Paul Musili Wambua v Attorney General & 2 Others [2015] eKLR and



submits that the applicants have not demonstrated any sufficient cause to warrant them to be granted leave to file an appeal out of time. Relying on the cases of *Utalii Transport Company Limited & 3 Others v NIC Bank Limited & Another* [2014] eKLR; *Karani v Judicial Service Commission (Petition 3 of 2021)* [2022] KESC 37 (KLR) and *Cecilia Wanja Waweru v Jackson Wainaina Muiruri & Another* [2014] eKLR, the respondent submits that the impugned ruling was delivered on 25<sup>th</sup> November 2021 and the applicants filed the current application 4 years later seeking to file an appeal out of time. The respondent argues that the delay is prolonged and lacks sufficient and justifiable reason for the undue delay and thus the applicants do not merit an extension of time to file an appeal. Further, the respondent argues that the reasons provided by the applicants for the delay are not credible or reasonable especially in the absence of any evidence to support their claims.

21. The respondent refers to the decision in *Job Kilach v Nation Media Group Ltd, Salaba Agencies Ltd & Michael Rono* [2015] eKLR and submits that the intended appeal discloses no triable issues. The respondent argues that the applicants admitted before the court in Succession Cause No. 817 of 2019 that they were not the children of the late Margaret Wambui Kimani.
22. Relying on the case of *Patel v EA Cargo Handling Services Ltd* [1974] EA 75, the respondent submits that granting the orders sought would not be just but would reopen settled issues and subject her to further prejudice and unnecessary litigation. The respondent further relies on the cases of *Ibrahim Mungara Mwangi v Francis Ndegwa Mwangi* [2014] eKLR and *Re Estate of Martim Tuwei Samitui (Deceased) (Succession Cause 81 of 1998)* [2023] KEHC 23647 (KLR) (17 October 2023) (Ruling) and submits that the doctrine of laches bars claims brought after an unreasonable and unexplained delay. Further equity aids the vigilant and not the indolent.

#### The Law

Whether the court should exercise its discretion to grant the applicants leave to file their appeal out of time;

23. Section 47 of the *Law of Succession Act* gives the court jurisdiction to entertain any application such as the present one which seeks to preserve the status quo pending the appeal. Section 79G of the *Civil Procedure Act* provides that the statutory period within which one is required to file an appeal is thirty days.
24. Section 79G of the *Civil Procedure Act* states:-

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 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.
25. It is clear from the wording of section 79G of the *Civil Procedure Act* that before the court considers extension of time, the applicant must satisfy the court that that he has good and sufficient cause for filing the appeal out of time. This principle was enunciated in the case of *Diplack Kenya Limited v William Muthama Kitonyi* [2018]eKLR an applicant seeking enlargement of time to file an appeal or admission of an already filed appeal must show that he has a good cause for doing so.



26. The Supreme Court in the case of *Nicholas Kiptoo Korir arap Salat v IEBC and 7 Others* [2014] eKLR enunciated the principles applicable in an application for leave to appeal out of time. The court stated inter alia that:-

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

- a. 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;
- b. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
- c. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case by case basis;
- d. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
- e. Whether there will be any prejudice suffered by the respondent if the extension is granted;
- f. Whether the application has been brought without undue delay.

27. Similarly in the case of *Paul Musili Wambua v Attorney General & 2 Others* [2015]eKLR, the Court of Appeal in considering an application for extension of time and leave to file the Notice of Appeal out of time stated the following:-

“.....it is now settled by a long line of authorities by this court that the decision of whether or not to extend the time for filing an appeal the Judge exercises unfettered discretion. However, in the exercise of such discretion, the court must act upon reason(s) not based on whim or caprice. In general the matters which a court takes into account in deciding whether or not to grant an extension of time are; the length of delay, the reason for the delay, the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted.”

28. It is trite that the length of delay and reasons thereof must be considered in an application of this nature. The ruling herein was delivered on 25<sup>th</sup> November 2021 and the applicants filed the current application on 29<sup>th</sup> May 2025. This is about four years outside the time limited for filing an appeal. The applicants have attributed the delay in filing their appeal on the ground that they were attempting out of court negotiations with the respondent,

who is the petitioner in their late brother’s estate. The respondent has denied that there was any attempt of any settlements out of court by the parties. The applicants ought to have provided proof by way of correspondence or through any other means to support their contentions of pursuing out of court negotiations. It has not been explained how and why an out of court settlement would have taken four (4) years. It is possible that this need to appeal has come as an afterthought. Furthermore, the delay of four (4) years is inordinate and inexcusable. In my view, that the applicants have not given any plausible explanation on the reasons for delay which is a requirement in an application of this nature.

29. On the perusal of the intended Memorandum of Appeal and the ruling of the trial court, it is my considered view that the appeal does not raise pertinent issues of law. The ruling of the magistrate indicates that the respondent has already filed a succession cause in relation to her husband. As such,



the estate of Margaret Wambui Kimani is a non-starter in regard to succession proceedings. Thus, it is evident that the chances of the intended appeal succeeding in the event that this application is allowed are quite limited. I am of the view that the applicants ought to pursue the protest in the Succession Cause No. 817 of 2019 instead of filing an appeal herein. The interest of the applicants will be adequately addressed in the estate of Joseph Mbugua Muriu as can be discerned from the facts of this application. The said succession cause already has a hearing date and the applicants ought to pursue their interests therein.

30. In the circumstances it is my considered view that the applicants have not established to the satisfaction of the court that time should be enlarged for them to file an appeal against the ruling delivered five (5) years ago.
31. Accordingly the application dated 29<sup>th</sup> May 2025 lacks merit and is hereby dismissed with costs to the respondent.
32. It is hereby so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SGIEND AT THIKA THIS 7<sup>TH</sup> DAY OF MAY 2026.**

**F. MUCHEMI**

**JUDGE**

