



**Hussein (Suing as the Administrator of the Estate of Amina Sora Gube) & 2 others v  
Hirbo (Civil Application E072 of 2025) [2025] KECA 1413 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1413 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPLICATION E072 OF 2025  
S OLE KANTAI, JA  
JULY 31, 2025**

**BETWEEN**

**ABDALLA SHERIFF HUSSEIN (SUING AS THE ADMINISTRATOR OF THE  
ESTATE OF AMINA SORA GUBE) ..... 1<sup>ST</sup> APPLICANT**

**ABDALLA SHERIFF HUSSEIN ..... 2<sup>ND</sup> APPLICANT**

**HALIMA HAGE GUMBE ..... 3<sup>RD</sup> APPLICANT**

**AND**

**FATUMA DIMA HIRBO ..... RESPONDENT**

*(An application for extension of time to file a Notice and Record of Appeal out of time  
against the Judgment of the High Court at Marsabit (Jesse Nyagah, J.) delivered on 6th  
March, 2025 in H.C.C.A No. E006 of 2022 As consolidated with HC. Misc. No. E004 of 2022)*

**RULING**

1. The applicants, Abdalla Shariff Hussein (Suing as the administrator of the estate of Amina Sora Gube), Abdalla Shariff Hussein and Halima Hage Gumbe apply by Motion under various provisions of law for various orders. The only prayer I can entertain as a single Judge is prayer 4 and 5:
  4. That this Honourable court be pleased to allow the Applicants to file this appeal against the decision of Honourable Justice Jesse Njagi in Marsabit Civil Appeal No. E06 of 2022 as consolidated with HCCCMISC/E004/2022 out of time.
  5. THAT the Applicants be granted leave of court to file and serve a Notice and Record of appeal out of time against the judgment of the High Court delivered on 6<sup>th</sup> March, 2025 in HCCCA/E006/2022 as consolidated with HCCCMISC/E004/2022.”



2. They say in grounds set out in the Motion and in a supporting affidavit of Abdalla Shariff Hussein and Halima Hage Qumbe that they filed an appeal at the High Court of Kenya at Marsabit; that judgment was delivered on 6<sup>th</sup> March, 2025:

...partly in favour of the Applicants and immediately thereafter, the Applicants applied for the certified copies of proceedings and judgment”;

that they seek leave to file an appeal out of time against part of the judgment; that delay in filing an appeal was due to inordinate delay in receiving typed proceedings which was beyond their control; that the intended appeal raises arguable and substantial points of law and fact as shown in draft Memorandum of Appeal; that the respondent will not suffer any prejudice that cannot be compensated by costs; that the application is brought without delay.

4. Attached to the application is a copy of the impugned judgment where the Judge ordered in the main:

The share of the deceased’s father to be re- distributed to his widow and grandchildren as stated above.”

5. There is a letter bespeaking proceedings dated 11<sup>th</sup> April, 2020 and draft Memorandum of Appeal where 10 grounds of appeal are set out. There is a further affidavit which is in response to a document titled “Grounds of Opposition”. The rules of this Court have no provision for such a document.

6. I have also seen written submissions by the applicant.

7. The principles to consider in an application like this one were well set out in the case of Fakir Mohamed vs. Joseph Mugambi & 2 Others in Civil Application No. 33 of 2004 as follows:

The exercise of this court’s discretion under Rule 4 has followed a well beaten path since the stricture ‘sufficient reason’ was removed by amendment in 1985. As it 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, the reason for the delay, (possibly) the chances of the appeal succeeding if 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 time limits, the resources of the parties, whether the matter raises issues of public importance – are all relevant but not exhaustive factors: See Mutiso vs. Mwangi Civil Application No. Nai. 255 of 1997 (ur), Mwangi vs. Kenya Airways Limited [2003] KLR 486, Major Joseph Mwereri Igweta vs. Mulika M’Ethare and Attorney General, Civil Application No. Nai 8/2000 (ur) and Murai vs. Wainana (No. 4) [1982] KLR 38.”

8. I note that judgment intended to be appealed was delivered on 6<sup>th</sup> March, 2025 and that the application is dated 6<sup>th</sup> May, 2025, a period of two months. The applicants say that an appeal was not filed on time because proceedings of the High Court were not received on time. I have seen a letter dated 11<sup>th</sup> April, 2025 to the High Court requesting proceedings; that letter was written about 5 weeks after judgment had been delivered. I do not think there is inordinate delay. I have not been told why a notice of appeal was not filed on time as required but I am prepared to excuse that issue having found there is no inordinate delay in bringing the application. I cannot see how the respondent would be prejudiced if I exercise discretion in favour of the applicants.

9. I allow the Motion for leave to extend time. Let Notice of Appeal be lodged within seven (7) days of today and record of appeal be filed fourteen (14) days thereafter. Costs of the Motion will be in the appeal.



**DATED AND DELIVERED AT NYERI THIS 31<sup>ST</sup> DAY OF JULY, 2025.**

**S. ole KANTAI**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

