



REPUBLIC OF KENYA



KENYA LAW
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**Karambu v M'ibuathu (Civil Application E073 of 2025)
[2025] KECA 1440 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1440 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E073 OF 2025
S OLE KANTAI, JA
JULY 31, 2025**

BETWEEN

REGINA KARAMBU APPLICANT

AND

JOEL MITHIKA M'IBUATHU RESPONDENT

(An application for extension of time for filing Notice of Appeal against the Ruling of the High Court of Kenya at Meru (Wamae T. Chereere, J.) delivered on 20th December, 2023 in H.C. Succ. Cause No. 533 of 2012)

RULING

1. The applicant, Regina Karambu applies by Motion said to be brought under various provisions of law including rule 4 of the Court of Appeal Rules that I be pleased to extend the time limited for filing Notice of Appeal and Memorandum of Appeal against the whole ruling delivered on 20th December, 2023 in High Court of Kenya at Meru Succession Cause No. 278 of 2000 In the matter of the estate of M'Ibuathu M'Ilula (deceased) between Joel Mithika M'Ibu'thu and Regina Karambu & Martha Kathure in favour of the respondent. It is stated in grounds in support of the application and in a supporting affidavit that the applicant is desirous of appealing the said ruling; that she was not notified by the previous lawyer when ruling was delivered or the outcome thereof; that she only learnt of the ruling when she perused the court file on a date that she has not disclosed; that the intended appeal has overwhelming chances of success; that delay is not inordinate or intentional; that the ruling disinherited her of her mother's estate and that the respondent will not suffer any prejudice if I extend time for filing an appeal.
2. Attached to the application is a copy of the impugned ruling where a grant of representation issued to the applicant and another was revoked and issued to Joe Mithika M'Ibuathu. There is also a draft Memorandum of Appeal.



3. There is a replying affidavit by the respondent Joel Mithika M’Ibuathu who says that the application is incompetent both in form and substance; that the application is an abuse of the process of the court and is brought 1½ years after the ruling was delivered without any reasonable explanation for inordinate delay. He says at paragraphs 14-17 (inclusive) of replying affidavit:

“ 14. That immediately the ruling was delivered, the applicant summoned me before the Antwamutwa Clan Elders vide summons dated 28.12.2023 to appear before them on 04.01.2024. Annexed herewith is a copy of the summons marked "JMM2".

15. That I took the summons to my advocate who replied to the same vide a letter dated 10.01.2024 clearly indicating that this matter was before the trial court and a ruling had been delivered on 23.12.2023. Annexed herewith is a letter dated 10.01.2024 marked "JMM3".

16. That the said letters confirm that the applicant was either aware of the ruling way before 28.12.2023 or was informed of the same on 10.01.2024 by my advocate through the attached letter and therefore cannot parade herself in a manner to depict innocence when she is seriously and deliberately lying to the court.

17. That THAT the draft memorandum of appeal annexed to the application is dated 03.02.2025 demonstrating that as early as January 2025 the applicant was in full knowledge of the impugned ruling but chose to file the application about 4 months later, a clear - demonstration of the applicant’s indolence and ill-will in this matter.”

4. He further depones that there is evidence that the applicant had full knowledge of the ruling in early January 2025 but did not file the application for 4 months; that the delay in bringing the application is inordinate; that Margaret Ciomaua, who the applicant purports to represent died in 2021 as captured in the ruling. Further, that the estate was distributed as ordered by Court on 31st October, 2007. Attached to the affidavit are, inter alia , a letter dated 28th December, 2023 by Antwamutwa Clan Elders to appear and answer allegations made against him by the applicant and a response to that summons by the respondent’s advocates.

5. The principles that apply in an application like this one were well laid out in 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.”



6. The applicant says that her previous lawyers did not inform her of the proceedings in the High Court or of the outcome of the ruling which was against her which was delivered on 20th December, 2023. She says that it was not until she perused the court file on a date that she does not disclose that she came to learn of the ruling. I note that the application is dated 16th May, 2025, a period of about 1½ years after ruling was delivered. The respondent has shown me letters exchanged between the parties in December, 2023 where a clan was summoning the respondent to answer to allegations laid against him by the applicant after the ruling had been delivered. The applicant is less than truthful when she alleges that she did not know of the ruling. She knew not only that a ruling had been delivered but also the outcome thereof which led her to lodge the complaint against the respondent to the clan. I do not think in the circumstances that the applicant is entitled to my exercise of discretion in her favour. I also find that the delay in bringing the application to be inordinate; there is no reasonable explanation for delay. There is the additional issue that the subject matter at the High Court was a succession matter where leave to appeal should be sought and obtained.

7. The application has no merit. I dismiss it with costs to the respondent.

DATED AND DELIVERED AT NYERI THIS 31ST 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

