



REPUBLIC OF KENYA



KENYA LAW
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**Wais v Rashid & 3 others (Civil Application E063 of 2025)
[2025] KECA 1371 (KLR) (18 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1371 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E063 OF 2025
S OLE KANTAI, JA
JULY 18, 2025**

BETWEEN

GULZAR ABDUL WAIS APPLICANT

AND

YASMIN RASHID GANATRA 1ST RESPONDENT

TARIQ ABDUL RASHID 2ND RESPONDENT

RIZVAN ABDUL RASHID 3RD RESPONDENT

NAUSHEEN U GANATRA 4TH RESPONDENT

(An application for leave to file and serve the Record of Appeal out of time against the Judgment of the High Court of Kenya at Meru (F. M. Gikonyo, J.) delivered on 28th July, 2021 in Succ. Cause No. 667 of 2014.)

RULING

1. The applicant Gulzar Abdul Wais applies in the Motion on notice for various prayers and the only one I can entertain as a single Judge is the one where he prays that I be pleased to grant him leave to file an appeal out of time against the judgment in Meru High Court Succession Cause No. 667 of 2014. In grounds in support of the application and in her supporting affidavit she says that the High Court in the said Succession Cause delivered a judgment on 28th July, 2021; that she was dissatisfied with the judgment and desired to appeal and instructed her lawyer to appeal; that the lawyer did not take any



step to appeal; that the deceased had left a valid will on how to distribute her estate but that although the respondents' parents had been provided for:

“the High Court tampered with the testamentary freedom of the deceased and distributed LR No. Ntima/Igoki/5685 “herein the suit land” against the wishes of the testator thus the desire to appeal against the judgment...”

2. The applicant further says that having instructed a new lawyer she has been advised that mistakes of her previous unnamed lawyer should not be visited on her; that the intended appeal has high chances of success and for all that she prays that time for filing an appeal be extended.
3. Attached to the application is a copy of the impugned judgment; a letter dated 25th October, 2022 by M/s Kilonzo & Co. Advocates forwarding draft Memorandum of Appeal to their client Mrs. Reshima Salim and draft Memorandum of Appeal. I have not seen a notice of appeal.
4. In a replying affidavit the 1st respondent Yasmin Rashid Ganatra depones for himself and the other respondents that the application is misconceived, dishonest and brought late; that there was a protracted hearing which was brought to close by Gikonyo, J. in the judgment delivered on 28th July, 2021; that the Judge distributed estate property to the beneficiaries in an equitable manner; that the applicant had a lackadaisical attitude towards execution of the grant leading her to move the court on 5th April, 2023 to have the same revoked and a fresh grant issued to her to enable the deceased's estate be distributed. She says at paragraphs 10-13 (inclusive) of the affidavit:

“10. That the Applicant responded to the said application vide her replying affidavit on 30th October, 2013. Annexed and marked “YRG 2” is a copy of the replying Affidavit.

11. That both sides filed their written submissions whose copies are respectively annexed herewith and marked “YRG 3 & 4”.

12. That this application has not been determined because the Applicant has all along pleaded with the court to be allowed time to implement the grant. I annex herewith and mark as “YRG 5” a certified copy of the proceedings which inter-alia show that after Judge F.M. Gikonyo delivered the Judgement on 28th July 2021, the Applicant has done the following: -

- a. On 11th November, 2023, her Advocates informed the court that the Applicant was ready and willing to implement the grant and complete the administration.
- b. The matter was fixed for mention on 27th February, 2024 to confirm distribution.
- c. On 5th October, 2024 Counsel for the Applicant informed the court that they were facing challenges implementing the grant since, allegedly, the [Sectional Properties Act](#) had not been gazetted for application to properties in Meru. She therefore applied for summons to issue to the Land Registrar Meru to come to court and confirm the status of application of the [Sectional Properties Act](#) in Meru.



- d. Indeed, Summons to the Land Registrar were issued and the Land Registrar appeared in court on 27th March, 2025 and confirmed the obvious, that the Sectional Properties Act applies to properties in Meru but he was yet to register such a property.
- e. The Court ordered the Applicant to have all the requisite documents prepared and executed and hand them over within Seven (7) days to our Advocates to assist in converting and registering to land parcel No. NTIMA/IGOKI/5685 as a sectional property.
- f. On 28th March, 2025 our Advocates wrote to the Applicants' Advocates calling for the sharing of the consummation of the grant documents as ordered by the court. Annexed and marked "YRG 6" is a copy of the said letter.
- g. On 3rd February, 2025, the Applicants Advocates wrote to our Advocates enquiring what documents the Applicant was to sign to complete registration of the Sectional Property. Annexed and marked "YRG7" is a copy of said letter.
- h. Our Advocates responded vide their letter of 3rd April 2025. Annexed herewith and marked "YRG 8" pointing out that as the Advocates for the Petitioner, surely it was their duty to prepare the appropriate documents.
- i. On 3rd April, 2025, the Applicants Advocates wrote back to our Advocates pleading to know what documents were to be executed to transmit the property. Annexed and marked "YRG 9" is a copy of the said letter.
- j. On 4th April, 2025 our advocates responded explaining that the Applicant/Respondent needed to engage a consultant and they were willing to recommend one. Annexed and marked "YRG 10" is a copy of the said letter.
- k. Instead of seeking to know the details of the consultant, the Applicant field (sic) the present application.

13. THAT the flow of evidence detailed above shows an Applicant who was albeit reluctantly, moving to implement the grant. This is route she has walked for close to four (4) years and her turn around and the making of this application for leave to file appeal out of time is an afterthought and dishonest."

- 5. Attached to the affidavit are various documents evidence of what the deponent has stated in the affidavit.
- 6. I have perused the submissions filed in support or opposition to the application.



7. The principles that apply in an application of this nature were well summarized in the oft-cited case of *Fakir Mohamed vs. Joseph Mugambi & 2 Others* in Civil Application No. 33 of 2004 analyzed factors to be the following:

“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 think the applicant has been economical with the truth in the way she has approached the court. All she says in that after judgment was delivered by the High Court on 28th July, 2021 she was dissatisfied with the outcome and she had instructed her then lawyers to lodge an appeal but they did not do so.
9. I have seen correspondence from M/s Kilonzo & Co., Advocates who wrote a letter on 25th October 2022 presumably to the deceased forwarding a draft Memorandum of Appeal for her approval. I am not told whether that letter was responded to.
10. What has emerged from information availed to me by the 1st respondent is that the matter has been active all along since judgment was delivered where parties were actively involved in trying to execute the judgment. The applicant is therefore less than truthful in the information she has availed to me and that to me is not a person deserving of an exercise of discretion in her favour.
11. I note that the Motion is dated 24th April, 2025, a period nearly 4 years after judgment was delivered. The letter by M/s Kilonzo & Co., Advocates, for whatever it is worth, was written to their client more than a year after judgment and is of no help to the applicant. I further note that the matter at the High Court was a succession matter and I am not told whether leave to appeal to this Court which is necessary in such proceedings was sought or obtained.
12. So there is no reason for delay and the explanation given is not reasonable at all. The length of delay in applying for leave to appeal is too long in the circumstances. Engaging the services of a new lawyer, when parties have been actively involved in execution of the judgment of the High Court cannot be a good or reasonable excuse to be entitled to grant of leave to appeal.
13. For all those reasons I find the application not meeting any threshold on which I could exercise discretion in favour of the applicant. The Motion has no merit and I dismiss it with costs to the respondents.

DATED AND DELIVERED AT NYERI THIS 18TH 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

