



**Maina v Gichuki & another (Civil Application E004 of 2024)  
[2024] KECA 715 (KLR) (21 June 2024) (Ruling)**

Neutral citation: [2024] KECA 715 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPLICATION E004 OF 2024  
W KARANJA, JA  
JUNE 21, 2024**

**BETWEEN**

**BETH WANGECI MAINA ..... APPLICANT**

**AND**

**BETH WANGECI GICHUKI ..... 1<sup>ST</sup> RESPONDENT**

**CATHERINE WANJIRU ..... 2<sup>ND</sup> RESPONDENT**

*(Being an application for extension of time to file and serve an appeal and record of appeal out of time in respect to the ruling of the High Court at Kerugoya (R. Mwongo, J.) dated 18th April 2023 in Succession Cause No. 172B of 2014)*

**RULING**

1. The application before me dated 22<sup>nd</sup> January 2024 is filed by Beth Wangeci Maina, the applicant, in person. She seeks order, *inter alia*; that she be granted leave to file and serve the memorandum of appeal and record of appeal out of time; and to be granted leave to file an amended memorandum of appeal.
2. The applicant seeks to file an appeal against the ruling of Mwongo, J. delivered on 18<sup>th</sup> April 2013, on a preliminary objection raised by the 1<sup>st</sup> respondent. She avers that she was aggrieved by the said ruling and she instructed her advocates then on record to prepare an appeal to this Court on her behalf. She states that this notice of appeal was filed and served on time but the record was not. She kept following up the matter with the advocates who stopped responding to her calls, hence the delay in filing the record and also this application. She maintains that her advocate's fault should not be visited on her, and further, that the respondents will not be prejudiced if the application is allowed. She has annexed several documents as annexures, which include a letter to the Deputy Registrar dated 27<sup>th</sup> April 2013 requesting to be supplied with certified copies of the ruling and proceedings but which letter is not copied to counsel for the respondents and on the respondents themselves.



3. The application is opposed by Beth Wangeci Gichuki, the 2<sup>nd</sup> respondent, vide her affidavit sworn on 19<sup>th</sup> March 2024. She deponed that even the notice of appeal itself was filed out of time without the leave of the Court and the applicant has not sought leave for extension of time to file the notice of appeal or to deem it as duly filed within time.
4. Both parties filed submissions and the 2<sup>nd</sup> respondent has also filed a list of authorities.
5. I have considered the application, the rival affidavits and submissions by the parties and the law.
6. I have no hesitation in saying that this application is for dismissal for the following reason, which would carry all other possible reasons. This matter arises from a decision by Mwongo, J. on a preliminary objection. The Succession Cause originated from the Principal Magistrate's Court at Kerugoya which issued the grant of letters of administration in respect of the deceased herein who died in 1999. The High Court was not seized of the matter in its original jurisdiction. That being so, it is clear that leave to file an appeal to this Court was necessary. I have not seen any leave attached to the application. Even without considering the length of delay and the reasons given for the delay, my strong view is that this appeal, in the absence of leave to appeal to this Court has no chances of success whatsoever.
7. I have read carefully the ruling on the preliminary objection and even being alive to the fact that it is not my place as a single Judge to determine the chances of the appeal succeeding on merit, the applicant will have a very steep hill, if not mountain, to surmount to succeed in her appeal even if she had leave to appeal which she does not have.
8. This matter has been in Court for a very long time, and perpetuating its journey here will not serve the ends of Justice. I find the application devoid of merit and dismiss it with no order as to costs, it being a family matter.

**DATED AND DELIVERED AT NYERI THIS 21<sup>ST</sup> DAY OF JUNE 2024**

**W. KARANJA**

.....

**JUDGE OF APPEAL**

**DEPUTY REGISTRAR**

