



**Gichuru (Suing on His Behalf and as Legal Representative of the Estate of Wanjiku Gichuru) v Principal Secretary Ministry of Lands and Physical Planning & another; Gichuru (Interested Party) (Civil Application E051 of 2023) [2024] KECA 1325 (KLR) (27 September 2024) (Ruling)**

Neutral citation: [2024] KECA 1325 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CIVIL APPLICATION E051 OF 2023  
MA WARSAME, JA  
SEPTEMBER 27, 2024**

**BETWEEN**

**STEPHEN WANG'ANG'A GICHURU (SUING ON HIS BEHALF AND AS LEGAL REPRESENTATIVE OF THE ESTATE OF WANJIKU GICHURU) ... APPLICANT**

**AND**

**THE PRINCIPAL SECRETARY MINISTRY OF LANDS AND PHYSICAL PLANNING ..... 1<sup>ST</sup> RESPONDENT**

**THE DISTRICT SURVEYOR NYANDARUA NORTH ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**ROBERT WANG'ANG'A GICHURU ..... INTERESTED PARTY**

*(An application for leave to file a notice of Appeal, Memorandum of Appeal and record of appeal against the Judgment of the High Court (Angima, J.) delivered on 14th July, 2022)*

**RULING**

1. The applicant has filed a notice of motion dated 13<sup>th</sup> December, 2023 seeking to file a notice of appeal and record of appeal out of time against the judgment of the High Court dated 14<sup>th</sup> July 2022, which dismissed a Judicial review application filed by the deceased Wanjiku Gichuru through the applicant.
2. The Judicial review application was intended to bar the respondents from subdividing Nyandarua/Lesirko/336 in favour of the interested party herein and on the basis of a court order dated 19<sup>th</sup> September 1993 made in Nyahururu RMCC No 77 of 1982 which the deceased claimed she was unaware of.



3. The court in dismissing the application held that the application was incompetent for having been filed out of time, being 16 days outside the statutory timelines. The court further held that in any event the application lacked merit because the deceased applicant had been economical with the truth and the evidence on record showed that she was aware of the proceedings and had in fact testified in opposition to the interested parties' claim before a Panel of elders whose award was eventually adopted by the court in Nyahururu RMCC No 77 of 1982.
4. Aggrieved by this decision, the applicant who was given authority to act on behalf of his mother intends to file an appeal against that decision and seeks extension of time to file the requisite documents.
5. The reason for filing the instant application 17 months out of time as stated in the face of the application and the supporting affidavit is that the applicant filed the judicial review application through his advocates and was not able to follow up since his advocates had conduct of the matter who did not appear in court as per the court proceedings, that the judgment was delivered in the his absence and the absence of his advocates and that there was a delay in the typing of proceedings.
6. The Interested party, Robert Wang'ang'a, opposed the application via a replying affidavit dated 27<sup>th</sup> March, 2024 and averred that the applicant was aware of the judgment but took no steps to file an appeal, the delay of 17 months has not been explained, that Wanjiku Gichuru died on 2<sup>nd</sup> August, 2022 and the applicant has not adduced any grant to prove he is her legal representative thus he has no proper locus standi.
7. The respondents did not participate in the appeal.
8. I have considered the application, the interested party's affidavit and submissions on record. Two issues arise for determination, whether the applicant has locus standi to bring the instant application and to institute the intended appeal, and whether the orders sought are merited.
9. Rule 87. (1) of the Court of Appeal Rules provides that an appeal shall not be instituted in the name of a person who is dead but may be instituted in the name of the deceased person's legal representative. It is trite law that for a person to institute legal action and proceedings as a representative of the estate of a deceased person, the applicant should be clothed with proper legal capacity (Locus Standi). To do so the applicant has to apply for either grant of Letters of Administration or letters of Administration Ad Litem for the purposes of pursuing the intended appeal
10. It is undisputed that Wanjiku Gichuru died on 2<sup>nd</sup> August 2022. As correctly pointed out by the interested party, the applicant has not produced a grant of letters of administration declaring him to be the legal representative of his mother's estate. The applicant has only produced an authority to Act dated 12<sup>th</sup> October, 2021 where the deceased authorised him to sign affidavits and give evidence on her behalf before the trial court due to ill health.
11. Again, the applicant cannot bring the application on his on behalf because his involvement in the judicial review proceedings before the trial court was limited to swearing affidavits and giving evidence where necessary on behalf of his mother while she was alive but incapacitated and not in his own capacity.
12. From the foregoing, I find that the applicant does not have locus standi to bring the instant application and cannot be heard, whether or not he has a case worth listening to. Consequently, I must down my tools as I cannot delve into the determination for the prayer for extension of time to file the intended appeal. The notice of motion dated 13<sup>th</sup> December, 2023 be and is hereby struck out with costs to the 1<sup>st</sup> interested party.



**DATED AND DELIVERED AT NAKURU THIS 27<sup>TH</sup> DAY OF SEPTEMBER 2024.**

**M.WARSAME**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

Signed

**DEPUTY REGISTRAR.**

