



Githu & 6 others v Wambiru & another (Civil Application E030 of 2024) [2024] KECA 1333 (KLR) (27 September 2024) (Ruling)

Neutral citation: [2024] KECA 1333 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E030 OF 2024**

JW LESSIT, JA

SEPTEMBER 27, 2024

BETWEEN

**NYONYO GITHU 1ST APPLICANT
JOROME KAMAU GITHU 2ND APPLICANT
JANE WAMBUI GITHU 3RD APPLICANT
JOZELLE GATHONI COX 4TH APPLICANT
WAMBIRU GIOVANNI COX 5TH APPLICANT
KIMBERLY WAHU COX 6TH APPLICANT
ASHLI BIANCA COX 7TH APPLICANT**

AND

**STEPHEN RAGUI NJOROGE 1ST RESPONDENT
ROBERT ERIC WAMBIRU 2ND RESPONDENT**

(Being an application for extension of time to file an appeal against the Ruling of the High Court at Nairobi (Riechi, J.) dated 28th July 2023 in High Court Family Division, Probate & Administration Cause No. E1115 of 2020)

RULING

1. Nyonyo Githu, the 1st applicant has, on behalf of the rest of the applicants; Jorome Kamau Githu, Jane Wambui Githu, Jozelle Gathoni Cox, Wambiru Giovanni Cox, Kimberly Wahu Cox and Ashli Bianca Cox, the 2nd to 7th applicants, respectively filed a Notice of Motion application dated 28th September 2023 pursuant to rules 4, 1- 43 and 62 of the Court of Appeal Rules, 2020, among other provisions



of the law, seeking extension of time to file an appeal against the ruling of the High Court of Nairobi (Riechi, J.) dated 28th July 2023.

2. The 1st applicant and Stephen Ragui Njoroge and Robert Eric Wambiru, the 1st and 2nd respondents respectively are the administrators of the estate of Alice Hottensiah Githu (deceased) who died on 28th January 2019.
3. In both the application and in the supporting affidavit of the 1st applicant sworn on the even date, the 1st respondent avers that the applicants filed and served their notice of appeal in compliance with rule 75(2) and 77(1) (77 and 79(1) of 2022 Rules) of the Court of Appeal Rules respectively. He attributes the delay to filing their substantive appeal on the part of the high court registry, family division, in obtaining the typed proceedings. It is averred that a request was made via a letter on 17th August 2023 to the deputy registrar for issuance of the typed proceedings with the same not being addressed. Further, that looking through the e-filing case activity page, he found that the file was with the deputy registrar and upon numerous visits to the registry, the last being on 21st September 2023, the 1st applicant found out that the file was in the trial Judge's chambers awaiting his signature on the re-typed grant and that the Judge was on leave and was to return on 28th September 2023. The applicants state that they later on 26th September 2023 filed with the registry a request via letter dated 25th September 2023 for a certificate of delay which is yet to be issued.
4. The applicants deposed that they have an arguable appeal which they believe has merit as evidenced in their memorandum of appeal dated 28th September 2023 which challenges the manner in which the learned trial Judge handled the matter, that they have brought the instant application without undue delay, and that the extension of time will not cause hardship or undue prejudice to the respondents. The applicants thus ask this Court to grant the extension of time to enable the proceedings to be typed and to enable the applicants present a complete record of appeal.
5. In their written submissions dated 7th May 2024 the applicants reiterate their averments in their application that obtaining the typed proceedings is the only challenge they face to filing their substantive appeal. Further, that on 6th May 2024 the registrar's office informed the 1st applicant that the typed proceedings should be ready although they could not be confirmed as it was alleged that the file was scheduled for mention before the trial Judge on the May 2024 and that he should return on 9th May 2024 for confirmation.
6. I have considered the application as well as the supporting affidavit and the submission. As for the factors to be considered when determining an application for extension are well settled in many decisions of this Court, including in Paul Wanjohi Mathenge vs. Duncan Gichane Mathenge [2013] eKLR are as follows:

“The discretion under rule 4 is unfettered, but it has to be exercised judicially, not on whim, sympathy or caprice. I take note that in exercising my discretion I ought to be guided by consideration of the factors stated in previous decisions of this court including, but not limited to, the period of delay, the reasons for the delay, the degree of prejudice to the respondent and interested parties if the applications is granted, and whether the matter raises several visits to the court registry issues of public importance...”
7. The applicants have demonstrated that they are yet to obtain the typed proceedings from the superior court despite efforts to get them through visits to the registry including writing to the registrar of the court. The applicants have annexed documents in form of correspondences addressed to the court that are duly stamped to confirm receipt, a demonstration of the steps taken.



8. I have also glanced at the memorandum of appeal annexed to the application. The applicants have come in person. I note the grounds raised are argumentative in part. Apart from that defect, I am satisfied that arguable grounds have been raised, deserving of consideration by the Court.

9. The application is unopposed. No response was filed, whether by replying affidavit or submissions.

I find merit in this application and order:

- i. The application dated 22nd May 2024 be and is hereby allowed, and the time to file and serve the record of appeal is extended;
- ii. The applicant is granted 30 days to file the record of appeal from the date hereof; and to serve the respondents within 21 days from the date of filing;
- iii. The costs of the application be in the appeal.

DATED AND DELIVERED AT NAKURU THIS 27TH DAY OF SEPTEMBER, 2024.

J. LESIIT

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.

