



**Gichangi & another v Murage & 4 others (Civil Application
E071 of 2024) [2024] KECA 1348 (KLR) (3 October 2024) (Ruling)**

Neutral citation: [2024] KECA 1348 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E071 OF 2024
S OLE KANTAI, JA
OCTOBER 3, 2024**

BETWEEN

PETERSON WANJOHI GICHANGI 1ST APPLICANT

JEPHITHAH KINYUA GICHANGI 2ND APPLICANT

AND

JULIANA WANGITHI MURAGE 1ST RESPONDENT

PETER MURIITHI MURAGE 2ND RESPONDENT

JAMES MUTHII MURAGE 3RD RESPONDENT

REUBEN KIMANI MURAGE 4TH RESPONDENT

ELIUD MAINA MURAGE 5TH RESPONDENT

(An application for extension of time to lodge Notice of Appeal and Leave to file appeal out of time from the Judgment of the High Court at Kerugoya (L.W. Gitari, J.) dated 4th April, 2024 in HC Succession Cause No. 352 of 2013.)

RULING

1. The applicants Peterson Wanjohi Gichangi and Jephithah Kinyua Gichangi bring this Motion under rule 4 of the Court of Appeal Rules amongst other provisions of law where they pray that I be pleased to grant leave for them to lodge notice of appeal dated 14th April, 2024 and file a record of appeal out of time.
2. In grounds in support of the Motion and in their supporting affidavit they say that they filed summons for revocation of a grant in Kerugoya High Court Succession Cause No. 352 of 2013 after realising that they had been left out of distribution of the estate of their grandfather; the summons were dismissed in a judgment delivered on 4th April, 2024; they instructed their former lawyers to lodge an appeal but



this was not done; the mistakes of the lawyer should not be visited upon them; that the intended appeal raises substantial issues that need to be heard and determined.

3. There is a replying affidavit of Juliana Wangithi Muruga, the 1st respondent, who has authority of the 2nd to 5th respondents, who says that the application is an afterthought and a waste of courts' time; that the applicants should have filed an appeal on time as they fully participated in the matter at the High Court; that draft Memorandum of Appeal "... should fall on its arrival as it offends the law of succession ACT", that the application should be dismissed.
4. I have seen judgment of Gitari, J. delivered on 4th April, 2023 where the applicants' application was dismissed. I have also seen notice of appeal dated 18th April, 2024 lodged with the Deputy Registrar at Kerugoya the same day and draft Memorandum of Appeal where 9 grounds of appeal are set out.
5. I have also seen and considered written submissions filed by both sides.
6. The principles which apply in an application of this nature were well set out in the oft-cited case of Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi [1999] 2 EA 231 as follows:

"It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well stated that in general the matters which this Court takes into account in deciding whether to grant an extension of time, are first, the length of the delay, secondly, the reason for the delay, thirdly (possibly) the chances of the appeal succeeding if the application is granted, and fourthly, the degree of prejudice to the respondent if the application is granted."
7. I note that notice of appeal was lodged within time. The application before me is dated 7th August, 2024, about 4 months after judgment. I do not think that there is inordinate delay and there is a reasonable explanation for the delay where the previous lawyers did not lodge appeal on time as instructed by the applicants. I entertain a doubt on chances of the appeal succeeding considering that the judgment was in respect of a succession dispute and I have not been told whether the applicants sought or obtained leave to appeal which is a necessary pre-requisite in succession matters. That is however only one of the considerations in this kind of application and the respondents can take it up later if they are so minded.
8. I allow the application. Let the applicants lodge notice of appeal within fourteen (14) days and record of appeal within fourteen (14) days thereafter. Costs of this Motion will be in the appeal.

DATED AND DELIVERED AT NYERI THIS 3RD DAY OF OCTOBER, 2024.

S. OLE KANTAI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

