



**In re Estate of Kamukii Mwethi (Deceased) (Civil Application E114 of 2023) [2024] KECA 1610 (KLR) (8 November 2024) (Ruling)**

Neutral citation: [2024] KECA 1610 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E114 OF 2023**

**F SICHALE, JA**

**NOVEMBER 8, 2024**

**IN THE MATTER OF THE ESTATE OF KAMUKII MWETHI-  
(DECEASED)**

**BETWEEN**

**EMK ..... APPLICANT**

**AND**

**JOHN KINYANJUI MWAURA ..... 1<sup>ST</sup> RESPONDENT**

**PETER KINYANJUI MWAURA ..... 2<sup>ND</sup> RESPONDENT**

*(Being an Application for Extension of Time to file an Appeal against the judgment of the High Court of Kenya at Kiambu (Kasango J), dated 22nd September 2022 in (Kiambu High Court Succession Cause No. 94 of 2017 FORMARELY Nairobi High Court Succession Cause No. 2825 of 1999)*

**RULING**

1. The Notice of Motion before me is an omnibus application dated 23<sup>rd</sup> March 2023, brought pursuant to the provisions of Order 5 Rule 6 of the Civil Procedure Rules, Rule 4, 39, 42, 43 and 47 of the Court of Appeal Rules 2010, Article 10, 48, 50 and 159 of *the Constitution* of Kenya 2010 in which EMK (the applicant herein), has invoked the jurisdiction of this Court sitting as a Single Judge seeking the following orders:
  - i. Spent.
  - ii. That the Honourable Court be pleased to grant the applicant leave to appeal out of time against the judgment delivered on the 22/9/2022 by the Hon. Lady Justice Mary Kasango in Kiambu.





12. I have looked at the documents that have been annexed in support of the motion from Kiambu Doctors Plaza and Nairobi Metropolitan Hospital and indeed note that the applicant has been ailing and has on several occasions been admitted to hospital prior and after delivery of the judgment.
13. Matters were made worse when he lost his wife sometimes in the month of April 2022.
14. In view of the foregoing, I find the reasons given for the delay to be reasonable/ plausible and I am satisfied that the delay in filing the intended appeal is not deliberate nor inordinate.
15. With regard to the possibility of the intended appeal succeeding, I am alive to the fact that I cannot make such a determination sitting as a Single Judge and I will therefore make no further comment regarding this issue.
16. As regards prejudice, I am satisfied that the degree of prejudice to be suffered by the applicant in the event that this motion is not allowed is higher as opposed to the respondent as he will have been driven out of the seat of justice. The respondents on the other hand will have a chance to ventilate their case in Court.
17. Given the circumstances, I find that the applicant has demonstrated and satisfied the existence of the principles for consideration in the exercise of my unfettered discretion pursuant to Rule 4 of this Court to extend time within which to file the intended appeal.
18. Regarding prayer 3 of the motion, the applicant is seeking a stay of execution of the impugned judgment. I note that this Court sitting as a Single Judge has no powers/ jurisdiction to entertain such a prayer and consequently I will make no further comment regarding the same.
19. Accordingly, the applicant's motion dated 23<sup>rd</sup> March 2023, is merited and the same is allowed partially in terms of prayer 2 thereof.
20. The applicant shall proceed to file the intended appeal within 60 days from the date of this ruling failure to which this orders shall stand vacated.
21. The costs of this motion shall abide the outcome of the intended appeal.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS DAY OF NOVEMBER 2024.**

**F. SICHALE**

.....

**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR.**

