



REPUBLIC OF KENYA



**Njega v Kinya (Civil Application E101 of 2024)  
[2024] KECA 1877 (KLR) (20 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1877 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPLICATION E101 OF 2024  
AO MUCHELULE, JA  
DECEMBER 20, 2024**

**BETWEEN**

**THOMAS NJEGA ..... APPLICANT**

**AND**

**STELLA KINYA ..... RESPONDENT**

*(An application for extension of time to file and serve the Notice of Appeal, Memorandum of Appeal, and Record of Appeal out of time in an intended appeal against the judgment of the High Court of Kenya at Embu (L. Njuguna, J.) dated 24th April 2023 in Civil Appeal No. 4 of 2023)*

**RULING**

1. By an application dated 7<sup>th</sup> October 2024 brought under section 7 of the [Appellate Jurisdiction Act](#), section 47 of the [Law of Succession Act](#), Rules 5(2)(b) and 77 of the Court of Appeal Rules 2022 and Rule 73 of the Probate and Administration Rules, the applicant, Thomas Njega, sought the extension of time to file and serve a notice of appeal, Memorandum of Appeal and Record of Appeal and that the Notice of Appeal dated 3<sup>rd</sup> July 2024 be deemed to be properly filed. He equally sought an order for injunction and the stay of execution against the impugned judgment.
2. The judgment subject of the intended appeal was delivered on 24<sup>th</sup> April 2024 by the learned L. Njuguna, J. in Civil Appeal No. 4 of 2023 in the High Court at Embu. The background herein is that on 4<sup>th</sup> May 2015 before the trial court, a grant of letters of administration intestate was issued to one Lucas Ndwiga Njega, in the estate of the late Cyrus Ileri Njega vide Succession Cause No. 21 of 2014. The grant was confirmed and a certificate of confirmation was issued on 10<sup>th</sup> March 2016 indicating six (6) beneficiaries of the estate were to benefit from land parcel no. Kyeni/Mufu/2628 (the suit property), which was to be distributed in equal shares.



3. The respondent herein vide summons dated 25<sup>th</sup> January 2018, seeking to have the certificate of confirmation of grant set aside on the allegation that it was obtained by untrue allegation of facts, false statement and concealment of material facts as the administrator failed to disclose that she and her brother were the deceased's children; that they were not involved in the succession cause. As a result, the estate was erroneously bequeathed to the deceased's siblings as per the certificate of confirmation of grant.
4. According to the respondent, she was a daughter of the deceased and has been residing on the suit property ever since she was born. She took her mother's surname, "Kinya". The deceased who was the youngest of his siblings, resided on the suit property with the respondent's mother until his demise. She further stated that at the time of the deceased's demise, she was working in Embu. She attended the funeral. That after the said funeral, the deceased's siblings, including the applicant, demolished their mother's house, evicted her and took away all the livestock and household belongings. As a result, their mother turned into alcoholism due to stress and was unable to file a suit against the siblings. The applicant produced documentary evidence including birth registration, health records and photographs to prove that the deceased was her father. PW2 testified as the deceased's neighbour having worked for both the deceased and his father. She testified that the suit property was given to the deceased by his father. The deceased had been residing on the suit property with his wife, Margaret Kina and their two (2) children. She further stated that the respondent, her brother and mother were evicted after the death of the deceased. This evidence was equally corroborated by PW3 (the assistant chief), PW4 (the deceased's brother-in-law), PW5 and PW6 (neighbours). In opposition, the applicant contended that the deceased was a bachelor. DW2 testified that the respondent and her mother lived in the land adjacent to the suit property. That the respondent's mother was married to one "Mwaniki" and had six (6) children. She was never introduced to the deceased's family as a wife. Both DW3 and DW4 denied that the deceased was ever married.
5. The trial court found that the respondent had failed to prove that she was a daughter of the deceased. Neither was it proved that her mother was a wife of the deceased. In the circumstances, the deceased's siblings ranked in priority and there was therefore no reason to revoke the grant.
6. Aggrieved by the above decision, the respondent successfully appealed before the High Court. Vide judgment delivered on 24<sup>th</sup> April 2024, the learned judge, L. Njuguna. J. found that contrary to the trial court's findings, the failure of the respondent's mother to testify was immaterial. According to the evidence, it was held that the respondent resided with her mother and her brother on the suit property. The trial court's decision was set aside. The grant issued to Lucas Ndwiga Njenga was revoked. The certificate of confirmation of grant issued on 10<sup>th</sup> March 2016 was set aside. It was further directed that grant be issued to the respondent and summons for confirmation be filed within 30 days thereof.
7. In the draft notice of appeal dated 3<sup>rd</sup> July 2024, the applicant indicated that he intended to appeal against the judgment of 24<sup>th</sup> April 2024. He stated that upon delivery of the impugned judgment, his previous advocates on record failed to inform him of its delivery. He got to know of the judgment about two months after delivery. He then blames his then advocates for being lethargic in filing a notice of appeal despite his instructions to do so. These were the reasons advanced for the delay.
8. The application is opposed. The respondent reiterated that she was a daughter of the deceased. She averred that the applicant has failed to explain why for three (3) months, he did not follow up on the delivery of the judgment.
9. Under Rule 4 of the Court of Appeal Rules, the Court has discretionary and unfettered power to extend time to appeal. In dealing with the application to extend time, the Court will want the



applicant to explain the reasons why he did not bring himself within time; show that the delay in question was not inordinate; that, in extending time, the respondent will not be unduly prejudiced; and that the intended appeal has possible chances of success (See Nicholas Kiptoo arap Korir Salat – vs- IEBC & 7 Others [2014]eKLR). The Court will balance the applicant’s constitutionally underpinned right of appeal against the need to ensure the timely resolution of disputes, which is also a legal and constitutional imperative.

10. From 24<sup>th</sup> April 2023 when the impugned judgment was delivered to 7<sup>th</sup> October 2024 when the application was brought is a period of 18 months. The applicant may not have been informed by his previous advocates of the delivery of the impugned judgment, but certainly the period of delay was inordinately long. Both then and now, the applicant has had the benefit of counsel. It is trite that a party in litigation should be aware that, although he may be represented, the case belongs to him. He is thus expected to demonstrate reasonable diligence on his part before apportioning blame on counsel. He should show that at all times he was keen and cautious in pursuing his case. I agree with respondent that the applicant has not demonstrated that he had been vigilant in pursuing his intended appeal.
11. I have looked at the draft memorandum of appeal that was annexed to the application. It was submitted by the counsel for the applicant that the learned judge erred in failing to adequately address the issue as to whether the respondent qualified under section 3 of the Law of Succession Act to be a child of the deceased. I know that the full bench will finally decide on the merits of the appeal, but while bearing in mind the jurisdiction of a single judge as was explained in Athuman Nusura Juma –vs- Afwa Mohammed Ramadhan, CA No. 227 of 2015, I do not think that the intended appeal has possible chances of success.
12. Accordingly, I find no merit in the application, which I dismiss.
13. I make no orders as to costs.

**DATED AND DELIVERED AT NYERI THIS 20<sup>TH</sup> DAY OF DECEMBER 2024.**

**A.O. MUCHELULE**

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**JUDGE OF APPEAL**

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

*Signed*

Deputy Registrar

