



Ngei v Mwatu (Suing as the Legal Representatives and on Behalf of the Estate of Mwatu Mutune alias Mwatu Waita Nguyo) & another (Civil Application E155 of 2022) [2024] KECA 1737 (KLR) (6 December 2024) (Ruling)

Neutral citation: [2024] KECA 1737 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E155 OF 2022
W KARANJA, JA
DECEMBER 6, 2024**

BETWEEN

MUTUKU NGEI APPLICANT

AND

JULIUS MAKENZI MWATU (SUING AS THE LEGAL REPRESENTATIVES AND ON BEHALF OF THE ESTATE OF MWATU MUTUNE ALIAS MWATU WAITA NGUYO) 1ST RESPONDENT

ROBERT MUTYANGO MUSAU 2ND RESPONDENT

(Application brought under section 3A of the Civil Procedure Act Cap 21, section 3(2) of the Appellate Jurisdiction Act, Rule 20 & 47(4) of the Court of Appeals Rules 2010 of the Laws of Kenya and all other enabling Provisions of the Law.)

RULING

1. The notice of motion dated 1st March 2024 was listed for hearing before me this morning. The applicant seeks two (2) orders: that the time for filing a request for reference to full bench be extended and the request dated 22nd February 2024 be deemed as filed within time; and that the Court exercises its residual jurisdiction to do substantive justice and set aside the Ruling of a single Judge dated 3rd February 2023 and allow the application to file an appeal out of time.
2. I have considered the application, the grounds it is predicated on, the depositions contained in the supporting affidavit and the submission by the applicant dated 28th November 2024.
3. The Ruling of the single Judge (Okwengu, J.) was delivered on 3rd February 2023 and the request for reference was filed on 22nd February 2024 which is slightly over 1 year later. I note that this delay is



inordinate. The explanation given for the delay is that counsel on record failed to communicate to the applicant the outcome of his application in good time.

4. It is stated that the applicant is 90 years old, and is anxious to pursue his intended appeal. It is only for that reason that I will indulge the applicant and grant him seven (7) days from the date of this Ruling to move the court by way of formal request that the application for extension of time to file the appeal out of time be heard by a full bench pursuant to rule 57(b) of the Court of appeal Rules. The said application will then be heard and determined on its merit.
5. The second prayer is declined as this Court, sitting as a single Judge has no jurisdiction to set aside the Ruling of the single Judge that declined to extend time to file an appeal out of time.
6. There will be no order on costs as the application is not opposed.

DATED AND DELIVERED AT NAIROBI THIS 6TH DAY OF DECEMBER, 2024.

W. KARANJA

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

