



REPUBLIC OF KENYA



KENYA LAW
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**Njuguna v Mukiri (Civil Application E214 of 2023)
[2024] KECA 1769 (KLR) (6 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1769 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E214 OF 2023
W KARANJA, JA
DECEMBER 6, 2024
[IN CHAMBERS]**

BETWEEN

GATUMA MUKIRI NJUGUNA APPLICANT

AND

SERAH WANJIRU MUKIRI RESPONDENT

(Application brought under section 1A, 1B, 3A, 63(e), and Order 51 Rule 1, Rule 4, Rule 8 and Rule 10 of the Civil Procedure Rules and Rule 74 of the Court of Appeal Rules)

RULING

1. The notice of motion before me dated 26th April 2023 seeks extension of time within which to file and serve a record of appeal out of time against the judgment of Musyoka, J. delivered in Succession Cause No. 3339 of 2014 on 10th February 2020.
2. According to the learned counsel for the applicant Mr. Nelson Osiemo, he prepared a notice of appeal the same day and lodged it at the registry but it was neither acknowledged nor did they get back the stamped copy, duly signed by the Deputy Registrar of the court.
3. The notice of appeal we have on record is court stamped as received on 19th April 2023. Clearly, the notice of appeal was filed 3 years after delivery of the judgment the applicant seeks to challenge on appeal.
4. His application seeks extension of time to file the record of appeal out of time but there is no valid notice of appeal on record which can carry the record of appeal. The rules pertaining to extension of time in regard to the notice of appeal and to the record of appeal are different. An application for extension of time to file the record of appeal out of time presupposes that there is a valid notice of



appeal on record. As there is no such notice of appeal, an application to extend time within which to file the record of appeal does not lie.

5. Accordingly, I find this application devoid of merit and dismiss it accordingly with no order as to costs.

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

W. KARANJA

JUDGE OF APPEAL

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

signed

DEPUTY REGISTRAR

