



Arale (Personal Representative of the Estate of Muda Arale Farah) v Nur Olow Farah a.k.a. Olow Farah a.k.a. Diriye Mohamed Olow (Civil Appeal (Application) E080 of 2022) [2023] KECA 111 (KLR) (3 February 2023) (Ruling)

Neutral citation: [2023] KECA 111 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) E080 OF 2022
KI LAIBUTA, JA
FEBRUARY 3, 2023**

BETWEEN

OMAR MUDA ARALE (PERSONAL REPRESENTATIVE OF THE ESTATE OF MUDA ARALE FARAH) APPELLANT

AND

NUR OLOW FARAH A K A OLOW FARAH A K A DIRIYE MOHAMED OLOW RESPONDENT

(eing an application to re-hear an application under Rule 58 (3) of the Court of Appeal Rules, 2022 in Civil Appeal (Application) No E080 of 2022)

RULING

1. By a Notice of Motion dated December 22, 2022 and made under rule 58(3) of the [Court of Appeal Rules](#), the applicant, Noor Olow Farah AKA Olow Farah AKA Diriye Mohamed Olow, prays:
 - a. that the ruling made on November 11, 2022 by the Hon Justice Jamila Mohammed extending time for the 1st respondent, Omar Mude Arale, to file and serve the record of appeal out of time be set aside;
 - b. the court be pleased to rehear the 1st respondent's application dated May 12, 2022, and to afford the applicant an opportunity to be heard; and
 - c. that the costs of this application be provided for.
2. The applicant's motion is supported by his annexed affidavit sworn on December 22, 2022, and is anchored on 8 grounds set out on the face of the motion. According to the applicant, the impugned ruling was delivered in determination of the 1st respondent's motion, which was heard in the absence of his (the applicant's) counsel, M/s Tim Njenga and Company, on June 22, 2022. He deposes that his



counsel were not duly served with the hearing notice in view of the fact that the email address used for service was incorrect. Notwithstanding the foregoing, the applicant's counsel subsequently placed on the record his affidavit in reply to the 1st respondent's Motion on June 29, 2022 after the application had already been heard, but before delivery of the impugned ruling.

3. In his replying affidavit sworn on January 23, 2023, the 1st respondent contends that the applicant's motion was served upon his advocates through their official email address; that the orders sought have been overtaken by events in view of the fact that his appeal has already been filed.
4. Having carefully considered the applicant's motion, the grounds on which it is anchored, the affidavits in support and in reply, and the relief sought, I find that the applicant's Notice of Motion dated December 22, 2022 is not properly before me in view of the fact that the 1st prayer to set aside the impugned ruling of a single judge made under rule 4 of this Court's Rules would be the subject of a reference to a full bench pursuant to rule 57(1) (b) before the relief sought under rule 58(3) can be considered by a single judge. Accordingly, I hereby order and direct that the matter be first listed for hearing before a full bench.

DATED AND DELIVERED AT NAIROBI THIS 3RD DAY OF FEBRUARY, 2023.

DR K I LAIBUTA

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

