



REPUBLIC OF KENYA



KENYA LAW
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Miiri v Miiri (Civil Application 69 of 2020) [2022] KECA 39 (KLR) (4 February 2022) (Ruling)

Neutral citation: [2022] KECA 39 (KLR)

REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION 69 OF 2020
S OLE KANTAI, JA
FEBRUARY 4, 2022

BETWEEN

ESTHER WANJIRU MIIRI APPLICANT

AND

FRANCIS MURIITHI MIIRI RESPONDENT

(Being an application for extension of time for filing notice of appeal and leave to appeal out of time against the judgment of High Court of Kenya at Kerugoya (Gitari, J.) dated 29th May, 2020 in Succession Case No. 853 of 2013)

RULING

1. Kerugoya High Court Succession Cause No. 853 of 2013 related to distribution of the estate of the late Miiri Nderi alias Kiuria Nderi who died on 29th May, 1999.
2. In the motion taken before me by Esther Wanjiru Miiri (the applicant) said to be under Rule 4 of the Court of Appeal Rules, Section 66 of the Court of Appeal Rules (sic), Sections 1A, 1B and 3A of the Civil Procedure Act and other provisions of the law, it is prayed that I extend time for filing notice of appeal and that I extend the time for filing an appeal against the said decision.
3. The applicant is identified in the judgment as a daughter of the deceased. The motion which is drawn by Wanjiku Waweru & Co Advocates does not contain any grounds in support of the motion merely stating that it is supported by further grounds to be adduced during the hearing of the application.
4. In the affidavit in support of the motion the applicant says that she was engaged with the respondent Francis Muriithi Miiri in litigation in the same litigation cause and that after the matter was heard, she was not notified of the date of judgment and was not served with a judgment notice. Further that when the judgment was delivered, courts had been closed and there were minimal operations due to the Covid 19 pandemic. She was acting in person in the High Court and it is her lawyer who came to learn that judgment had been delivered.



5. She was aggrieved and dissatisfied as the estate was not equally distributed and daughters were discriminated against as sons were given bigger portions of land. She wants to appeal and she has attached to the motion, a Memorandum of Appeal where various grounds of appeal are taken.
6. There was no replying affidavit when I considered the application.
7. The principles that apply in an application of this nature are old hat.
8. They were well summarized in a ruling of the full Court in *Leo Sila Mutiso Hellen Wangari Mwangi* Civil Appeal No. Nai. 255 of 1997 as follows:

"It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well settled that in general the matters which this Court takes into account in deciding whether to grant an extension of time are: first the length of the delay, secondly, the reason for the delay; thirdly (possibly) the chances of the appeal succeeding if the application is granted; and, fourthly, the degree of prejudice to the respondent if the application is granted."

9. The applicant says that judgment was delivered without notice to her. She was not served as is required and she was entitled to be present when judgment was delivered. She says that she has substantial grounds that she would like to take on appeal as according to her, the estate was not distributed the way the law requires.
10. I am satisfied in the circumstances that the applicant satisfied the principles upon which an application of this nature is made. I allow the motion. Let the applicant file a notice of appeal within fourteen (14) days of today.

Costs of the motion will be in the intended appeal.

DATED AND DELIVERED AT NAIROBI THIS 4TH DAY OF FEBRUARY, 2022.

S. ole KANTAI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

