



**Gathu v Gathu (Civil Appeal (Application) E259 of 2020)
[2022] KECA 399 (KLR) (4 March 2022) (Ruling)**

Neutral citation: [2022] KECA 399 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) E259 OF 2020**

S OLE KANTAI, JA

MARCH 4, 2022

BETWEEN

JULIA WANJIRU GATHU APPLICANT

AND

MIRIAM GATHONI GATHU RESPONDENT

(An application for substitution from the Judgment of the High Court of Kenya at Nairobi (Musyoka, J.) dated 31st January, 2014 in HC. Succession Cause No. 1094 of 2007)

RULING

1. I am asked in the Motion brought under rules 4, 41, 99 (1 & 3) of the [Court of Appeal Rules](#) and Sections 3A and 3B of the [Appellate Jurisdiction Act](#) and other enabling provisions of law to substitute the name of Teresiah Nyambura Gathu, who is said to have died on 22nd December, 2017 with the name of Julia Wanjiru Gathu. I am also asked to extend the time for applying for that substitution and grant orders that the abated appeal be revived. The Motion is supported by an affidavit of the applicant (Julia Wanjiru Gathu) and grounds on the face of the Motion to the effect that the applicant is the daughter of the deceased; that the applicant was on 7th October, 2019 appointed as the administratrix of the estate of the deceased and was issued with a grant of letters of administration ad litem; that the deceased was a party in High Court Succession Cause No. 1094 of 2017 (Kiambu Succession Cause No. 24 of 2017) where Musyoka, J. had ruled against the deceased and being dissatisfied the deceased had preferred an appeal. Further, that Notice of Appeal was filed on time but was not served as required by the Court of Appeal Rules. It is said that if I do not allow the application the applicant and her siblings will be disinherited of suit property on which they have resided for over 50 years and buried their kin; that the intended appeal has merit with high chances of success.
2. There is a replying affidavit of the respondent (Miriam Gathoni Gathu) who depones amongst other things that the case has been before the courts since 2007 and several rulings have been issued by various Judges; that on 20th July, 2012 she (the respondent) was declared the sole child and beneficiary of



the estate of the deceased; that it was she (the respondent) who had instituted proceedings before the High Court against the deceased (mother of the applicant); that the only asset of the estate was Title No. Limuru/Bibiioni/1221 now registered in the respondents name; that there is no proper appeal against orders of the High Court; that the applicant lacks locus to institute an appeal and the appeal is incompetent.

3. I have seen the respective written submission by the parties and the list of authorities filed by the applicant.
4. This is an application for leave to extend time and the principles that apply in applications of this nature were well summarized in the case of *Fakir Mohamed v Joseph Mugambi & 2 Others* Civil Application No. 332 of 2004 as follows:

“The exercise of this Court’s discretion under Rule 4 has followed a well-beaten path since the stricture of “sufficient reason” was removed by amendment in 1985. As it is unfettered, there is no limit to the number of factors the court would consider so long as they are relevant. The period of delay, the reason for the delay (possibly) the chances of the appeal succeeding if the application is granted, the degree of prejudice to the respondent if the application is granted, the effect of the delay on public administration, the importance of compliance with time limits, the resources of the parties, whether the matter raises issues of public importance – are all relevant but not exhaustive factors: See *Mutiso v Mwangi*, Civil Application No. NAI. 255 of 1997 (ur), *Mwangi v Kenya Airways Limited* [2003] KLR 496, *Major Joseph Mwereri Igweta v Murika Methare & Attorney General* Civil Application No. NAI 8 of 2000 (ur) and *Murai v Wainaina (No. 4)* 1982 KLR 38.”

5. The applicant was represented by a law firm which, upon delivery of the ruling by the High Court on 3rd February, 2014 filed a Notice of Appeal dated 5th February, 2014. I am told that those advocates did not serve Notice of Appeal on time as required by the Court of Appeal Rules, an error which was noted by
6. the current advocates. I am also told that the effect of the ruling of the High Court may disinherit the applicant and her siblings. They have lived on the suit property for over 50 years; they know no other home; they have buried their kin on the land. In circumstances where Notice of Appeal was filed on time but was not served as required I am prepared to exercise my discretion and extend time, which I hereby do, to serve Notice of Appeal out of time. Let the applicant serve Notice of Appeal upon the respondent within 14 days of today and thereafter file Record of Appeal within 30 days. Costs of the Motion will be in the appeal.

DATED AND DELIVERED AT NAIROBI THIS 4TH DAY OF MARCH, 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

