



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Amanaka v Amanaka (Civil Application E031 of 2022)  
[2022] KECA 691 (KLR) (22 July 2022) (Ruling)**

Neutral citation: [2022] KECA 691 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CIVIL APPLICATION E031 OF 2022  
F TUIYOTT, JA  
JULY 22, 2022**

**BETWEEN**

**JOYCE OPISA AMANAKA ..... APPLICANT**

**AND**

**CHRISTINE NAFULA AMANAKA ..... RESPONDENT**

*(Being an application for expansion of time to allow the Applicant herein to file an appeal from the Judgment/Orders of the High Court of Kenya at Kakamega (William Musyoka, J) dated 10th April, 2019 in Succession Cause No. 534 OF 2016)*

**RULING**

- [1] Sitting as a single judge on behalf of the Court, I am asked to consider the Notice of Appeal dated December 24, 2021 in which Joyce Opisa Amanaka (the applicant) seeks leave of this Court to extend time for the filing of an appeal out of time. The motion is said to be brought under Articles 22 and 23 of *the Constitution*.
- [2] In an affidavit sworn on even date, the applicant deposes that she is the 1<sup>st</sup> widow of Samwel Amanaka Ng'onze (deceased) and that in a verdict delivered on 10<sup>th</sup> April, 2019, Hon. Musyoka, J in Succession Cause No. 534 of 2016 made a finding that her house was entitled to 60% of the deceased's estate while that of the respondent to 40%. That the Court then erroneously ruled that the landed property be registered in joint proprietorship of the two.
- [3] She states that she was unhappy with that order and filed an application for its review on 8<sup>th</sup> May, 2019. She deposes that it is now more than 33 months and the Judge has not heard the application. She thinks that the Judge is avoiding hearing and determining the case.
- [4] She states that the failure to file the appeal on time is predicated on the failure of the High Court to determine the review matter expeditiously and that the delay was not intentional.



- [5] I have seen no response to the application before me.
- [6] I am asked to exercise my discretion to extend time. That discretion must be exercised judiciously guided by the principles often restated by this Court. See for example in *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* – Civil Application No. Nai 251 of 1997 where this Court observed:
- “It is now settled that the decision whether to extend the time for appealing is essentially discretionary. It is also well stated 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 reasons 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.”
- [7] Implicit in the explanation given by the applicant for the delay is that she had two alternatives of challenging the High Court judgment of April 10, 2019. By review to the same court and by an appeal to this Court. She made her election and chose to apply for review before the High Court. She seems disappointed that the matter is taking rather long before it is determined.
- [8] This Court is unable to tell why there has been delay in the hearing of the review application before the High Court. The applicant took her chance in moving the High Court for review and it cannot be a good reason to come to this Court thirty three (33) months later with a plea to extend time simply because the matter did not move as quickly as she had hoped. The delay is inordinate and the explanation given for delay not plausible.
- [9] I am afraid I am unable to accede to the request made in the Notice of Motion dated December 24, 2021 and I do hereby dismiss it with costs.

**DATED AND DELIVERED AT KISUMU THIS 22<sup>ND</sup> DAY OF JULY, 2022.**

**F. TUIYOTT**

.....

**JUDGE OF APPEAL**

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

*Signed.*

**DEPUTY REGISTRAR**

