



REPUBLIC OF KENYA



KENYA LAW
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**M'Ringera v M'Mbutura (Civil Application 108 of 2019)
[2021] KECA 353 (KLR) (17 December 2021) (Ruling)**

Neutral citation: [2021] KECA 353 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION 108 OF 2019
F SICHALE, JA
DECEMBER 17, 2021**

BETWEEN

TABITHA NJIRU M'RINGERA APPLICANT

AND

KABURU M'MBUTURA RESPONDENT

(Being an application for extension of time to file and serve the record of appeal out of time from the judgment of the High Court of Kenya at Meru (Onginjo, J) dated 29th November, 2018 IN MERU HIGH COURT SUCCESSION CAUSE NO. 196 OF 2013)

RULING

1. The motion dated 11th July, 2018 came up before me for hearing on 8th December, 2021. In the motion, the applicant seeks an order for extension of time in order to file and serve the record of appeal. The motion is supported by the affidavit of Tabitha Njiru M'Ringera who deposes that she is 82 years old and ailing; that the deceased person died on 23rd April, 1999 leaving behind two sons, the respondent herein and her late husband, M' Ringera M'Mbutura; that she was aggrieved by the decision of Onginjo, J. delivered on 28th November, 2018; that on 14th December, 2018, she filed a Notice of Appeal which was served upon the respondent on 19th December, 2018; that she thereafter fell sick until May, 2019 when her health condition improved; that she was unable to follow up her intended appeal on account of illness and finally, that her late husband and the respondent are entitled to equal shares of their father's property.
2. In a replying affidavit dated 24th September, 2019, Kaburu M'Mbutura did not refute the applicant's averments as to her age and ill-health. He however admits that their late father's title Abothuguchi/Mariene/104 measuring one acre has since been transferred to himself and hence the motion is overtaken by events.



3. An application for extension of time is premised on Rule 4 of this Court's Rules. It provides:

“(4).The Court may, on such terms as it thinks just, by order extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.”
4. In my view, the applicant in her depositions explained the delay in filing the intended appeal, having filed the Notice of Appeal. As stated above, the said reasons were not controverted by the respondent. In my view, the fact that the subject matter of the dispute being LR No. Abothuguchi/Mariene/104 having been transferred to the respondent, is not one of the reasons for consideration in an application such as this one.
5. I am satisfied that the applicant has been able to satisfy the court on the reasons for the delay.
6. Accordingly, the motion dated 11th July, 2018 is hereby allowed. The applicant to file an appeal within 45 days of the date of this ruling.
7. It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 17TH DAY OF DECEMBER, 2021.

F. SICHALE

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

