



IN THE COURT OF APPEAL

AT NAIROBI

CORAM: KARANJA, JA. (IN CHAMBERS)

CIVIL APPLICATION NO. 20 OF 2020

BETWEEN

ALICE MWIKALI NGUMBI.....1ST APPLICANT
 SAMMY NGANDA NGUMBI.....2ND APPLICANT
 PETER NGILA NGUMBI.....3RD APPLICANT
 JOHN CARTHESE NGUMBI.....4TH APPLICANT
 STEPHEN MUSELI NGUMBI.....5TH APPLICANT
 AMOS KYONDU NGUMBI.....6TH APPLICANT
 JOSEPH MUNYENYI NGUMBI.....7TH APPLICANT
 CHRISTINE NGINA NGUMBI.....8TH APPLICANT

AND

SABINA MUMBUA NGUMBI.....RESPONDENT

(An application for extension of time to lodge an application for special leave as well

as seek leave to appeal against part of the Ruling of the High Court of Kenya at Machakos

(D. K. Kemei, J.) dated and delivered on 30th July, 2019 which dismissed the summons for

Revocation of grant dated 20th November, 2017 in H.C. Succession Cause No. 55 of 2016)

RULING

The applicants through the notice of motion dated 3rd February, 2020 principally seek two orders as follows:-

1. That the Honourable Court be pleased to grant an extension of time for the applicants to file an application for leave to appeal against part of the Ruling of Hon. Justice D. K. Kemei dated and delivered on 30th July, 2019 which dismissed the summons for revocation of grant dated 20th November, 2017 to the Court of Appeal.
2. That this Honourable court be please to grant leave to the applicants to appeal against part of the Ruling of Hon. D. K. Kemei dated and delivered on 30th July, 2019 dismissing the summons of revocation of grant dated 20th November, 2017 to the Court of Appeal.

From the outset, I need to clarify that an application for leave to appeal to this Court pursuant to **Rule 39(b)** of the Rules of this Court is a

full bench (3 Judge) application as clearly provided under **Rule 53(1)** and **(2)** of the Court of Appeal Rules. I do not therefore have jurisdiction to grant leave to appeal against the decision of D. K. Kemei as sought in prayer No. 2 of the applicants' application.

I will nonetheless deal with prayer No. 1. Extension of time is sought under **Rule 4** of the Rules of Court which allows the court to extend time limited by the Rules or by a decision of the Court for doing of any act authorised or required by the Rules. In this case, where an appeal lies only with the leave of either the court appealed from or to this Court, the application must be filed within 14 days from the date of the Ruling, sought to be appealed.

From the grounds on the face of the application and the affidavit in support sworn by Kariuki E. Kamau and Stephen Museli Ngumbi, the applicants did file the notice of appeal on time in compliance to **Rule 75 of the Court of Appeal Rules**; and started pursuing the proceedings only to realise later that leave to appeal was necessary. The said realisation came to them after the 14 days had lapsed. They however filed the application before the High Court but the same was dismissed. In order for them to file that application before this Court, they need that time to be extended.

The applicants concede that they filed the application before the High Court 66 days late. They explain that it was a mistake on the part of their previous counsel who did not seem to be aware that leave was necessary. They urge the Court to grant the extension sought in the interest of justice and fairness.

I have read the replying affidavit and submissions by counsel for the parties herein. From the said depositions, it is clear that the thrust of submissions is on the application for leave itself and not on the extension of time.

In order for the parties to have an opportunity to canvass the application for leave before a 3 Judge bench, it is my view that I should grant them the extension sought. In doing so, I have considered the fact that this is a succession matter involving members of the same family. It is important that they are not shut out at this point in time.

I note further that they had filed a notice of appeal on time and it is possible that counsel representing the applicants then was not keen enough to realise that they needed leave of court to file the appeal. I am also not persuaded that the delay was inordinate in the circumstances outlined in the affidavits. For these reasons, I allow the application in terms of prayer 1 and order that the applicants file and serve the application for leave within 14 days from the date of this Ruling. Each party will bear its own costs of the application. This Ruling also disposes of **Civil Application No.99 /2020** which is a replica of the application under consideration.

Dated and delivered at Nairobi this 7th day of August, 2020.

W. KARANJA

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR