



IN THE COURT OF APPEAL

AT NYERI

[CORAM: SICHALE, JA IN CHAMBERS]

CIVIL APPLICATION NO. 26 OF 2019

BETWEEN

PATRICIA HADIJA WAGAKI.....APPLICANT

AND

JOSEPH MURIITHI MATHINJI.....RESPONDENT

(Being an application for extension of time to lodge an Appeal against judgment of High Court

of Kenya at Nanyuki (Mary Kasango, J) dated 19th April, 2018 in Succession Cause No. 64 of 2016)

RULING

The applicant, **Patricia Hadija Wagaki** filed a Notice of Motion application pursuant to Rule 4 of this Court's Rules as well as Sections 3A and 3B of the Appellate Jurisdiction Act. In the main, the applicant sought to have time extended for the filing of an appeal against the decision in Nanyuki High Court Succession Cause No. 64 of 2016, delivered on **19th April, 2018**.

Joseph Muriithi Mathinji was named as a respondent. He however does not appear to have filed an affidavit in response to the applicant's supporting affidavit dated **8th March, 2019**.

The reasons for the delay as can be discerned from the Notice of Motion and the supporting affidavit are that the petitioner in the Succession Cause No. 64 of 2016, one **Miriam Wangui John** (the deceased) died on **16th September, 2018**; that the impugned judgment was delivered on **19th April, 2018**; that the deceased timeously lodged a Notice of Appeal on **24th April, 2018**; that on **2nd May, 2018**, the deceased applied for certified copies of the proceedings; that the proceedings became ready for collection on **16th October, 2018**, after the deceased petitioner had died; that on **20th November, 2018**, the applicant applied for Grant of Letters of Administration *ad litem* in respect of the estate of the deceased; that the Grant was issued on **17th December, 2018** and thereafter, the applicant applied to substitute the deceased petitioner and substitution took effect pursuant to a consent obtained on **4th January, 2019**.

I have considered the motion and its supporting affidavit as well as the law in absence of counsel in view of the prevailing circumstances caused by Covid 19 pandemic. Rule 4 of this Court's Rules provides that:

“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”.

The above rule, however, does not provide for factors a Court ought to consider in an application for enlargement of time.

Be that as it may, the Courts have devised appropriate principles to be applied in arriving at a 'just' decision, bearing in mind the circumstances of each case.

In **Andrew Kiplagat Chemaringo vs. Paul Kipkorir Kibet [2018] eKLR**, this Court stated:

“The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”

In the instant matter, it is my view that the delay has reasonably been explained. The death of the petitioner in the cause is a plausible explanation for the delay.

Accordingly, I allow the motion, I extend time to lodge the record of appeal against the judgment of **19th April, 2018** in High Court Case No. 64 of 2016 by thirty (30) days (in view of the Covid 19 pandemic) from the date of this ruling.

Each party to bear his/her own costs.

Dated and Delivered at Nairobi this 7th Day of August, 2020.

F. SICHALE

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR