



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: OUKO, (P), (IN CHAMBERS)

CIVIL APPLICATION NO. 107 OF 2018

BETWEEN

CHRISTOPHER WANJOHI NJUGUNA...1ST APPLICANT

MBACHA NJUGUNA.....2ND APPLICANT

MWANGI NJUGUNA.....3RD APPLICANT

DANSON IRUNGU NJUGUNA.....4TH APPLICANT

AND

IRUNGU NJUGUNA.....1ST RESPONDENT

JANE MUTHONI MWARIRI.....2ND RESPONDENT

(Being an application to seek leave to file a Notice of Appeal out of time in an intended appeal

against the Judgment and Decree of the High Court of Kenya at Nairobi (M.W.Muigai, J)

dated 16th June, 2017 In Succession Cause No. 2412 Of 2005

RULING

The case of **Leo Sila Mutiso V Rose Hellen Wangari Mwangi**, (Civil Application No. Nai. 255 of 1997) has laid down the yardstick for the exercise of discretionary powers by a single judge considering an application for extension of time under Rule 4 of the Court of Appeal Rules. It has established that the decision whether or not to extend the time for filing a notice of appeal or lodging the appeal itself will depend on the length of the delay, the reason for the delay, the chances of the appeal succeeding if the application is granted and the degree of prejudice to the respondent if the application is granted.

The applicants in the present application pray that time for filing both the notice of appeal and the record of appeal to challenge the decision of the High Court in H.C Succession Cause No. 2412 of 2005 be extended. The decision in question was rendered on 16th June, 2017 by Muigai, J., who revoked the earlier grant of representation and in its place issued a fresh one in the name of the surviving widow and two others representing the second and the third houses.

The applicants wish to challenge that decision but are unable because the time to do so has lapsed. They have explained that their erstwhile advocate did not communicate to them the outcome of the application for revocation; that being lay persons they did not know they required to file a notice of appeal; and that they lacked the finances to engage another advocate immediately.

The respondents have opposed the application arguing that the application is an afterthought; that the reasons advanced for the delay are not plausible; and that the intended appeal will not be arguable.

The delay involved is about nine (9) months between 16th June, 2017 and 29th March, 2018. Today it is two (2) years. The cause itself was

filed in 2005, a good fourteen (14) years today. In determining the length of delay, the reason or reasons for the delay and the other parameters set by **Leo Sila Mutiso** case (supra) the Court will balance between the concepts of access to justice and finality of litigation.

Blaming the advocate and ignorance of the law as the applicant have in this day and age is lame. The applicants' two main reasons for not filing the notice of appeal and the appeal within the time prescribed by the rules are without merit. Without being definitive, the decision of the learned judge appears plausible in the circumstances. Further delay will be prejudicial to the respondents. For these reasons the application is dismissed with no orders as to costs.

Dated and delivered at Nairobi this 5th day of July, 2019.

W. OUKO, (P)

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JUDGE OF APPEAL

I certify that this is a True copy of the original

DEPUTY REGISTRAR