



IN THE COURT OF APPEAL

AT KISUMU

(CORAM: VISRAM, MARAGA & KANTAI, JJ.A)

CIVIL APPLICATION NO. 72 OF 2014 (UR NO. 51/2014)

BETWEEN

BEATRICE LUKALO 1ST APPLICANT

MARGARET OSOLIKA 2ND APPLICANT

AND

TOM LUKALO RESPONDENT

(An Application for extension of time to apply for leave to appeal to the Supreme Court of Kenya against the decision of the Court of Appeal given at Kisumu (J.W. Onyango Otieno, F. Azangalala & S. ole Kantai, JJ.A) dated and Delivered on the 11th July, 2014

in

CIVIL APPEAL NO. 95 OF 2011)

RULING OF THE COURT

1. In their Notice of Motion dated 25th September 2014, **BEATRICE LUKALO** and **MARGARET OSOLIKA** (*the applicants*) have applied for extension of time to seek leave to appeal to the Supreme Court against the judgment of this Court (Onyango Otieno, Azangalala & Kantai, JJ.A) dated and delivered on 11th July 2014 in Civil Appeal No. 95 of 2011. The application is brought under the provisions of **Sections 3A** and **3B** of the Appellate Jurisdiction Act, **Rules 4, 39, 40, 41,42** and **43** of the Court of Appeal Rules and **Articles 95(2)(a), (d) & (e)** and **163(3) (b) & (4)(b)** of the Constitution and is based on the grounds that the failure to seek leave within a reasonable time was due to counsel for the applicants' error of sending a letter to the applicants seeking instructions to a wrong address. As a result of that error the applicants only got to know of this Court's said judgment on 1st September, 2014, and immediately re-instructed their counsel to make this application.

2. In her affidavit in support of this application, Margaret Osolika the 2nd applicant deposed that the applicants have a strong appeal as in her view, in its said judgment, this Court made fundamental errors of law like entertaining a matter that was already *res-judicata*, setting aside a fifteen year old certificate of confirmation of grant in the absence of any fraud and that the issues they wish to place before the Supreme Court not only involve many beneficiaries in this case but also affect literally all litigants who

file succession causes in our courts.

3. In response to that application, Tom Lukalo swore a replying affidavit on 22nd January, 2015, in which he dismissed this application as being unmeritorious and accused the applicants of indolence.

4. At the hearing before us, counsel for the parties reiterated their respective clients' positions as summarized above with counsel for the respondent adding that pursuant to this Court's said judgment remitting the matter to the High Court for determination, the High Court has fixed the matter for hearing in May 2015.

5. We have considered the application. Although, to our knowledge, there is no time limit set for bringing such applications, good practice demands that such an application should nonetheless be brought within a reasonable time. In this case it was not brought until after about four months. In the circumstances of this matter that was inordinate delay.

6. As this Court has umpteen times reiterated, in any application for extension of time, the applicant has to explain every aspect of delay. See this Court's decision in the case of **Kenya Airports Authority v. Timothy Nduvi Mutungi Civil Application No. Nai 165 of 2013** and **Alshabahi Ali Mohammed v. Maritime Freight Co. Ltd Civil Application No. Nai 136 of 2008; [2010] eKLR**.

7. In this case even if we accept that the applicants did not know of this Court's said judgment until 1st September 2014, as counsel for the respondent quite correctly observed, no explanation has been given for the failure to file this application for a period of about four months. The application itself is dated 25th September 2014 but filed on 24th November 2014 about two months later. So in total there is a whole period of six months of delay that has not been explained at all.

8. In the circumstances, we find no merit in this application and we accordingly dismiss it with costs.

DATED and Delivered at Kisumu this 25th day of March, 2015

ALNASHIR VISRAM

.....

JUDGE OF APPEAL

D.K. MARAGA

.....

JUDGE OF APPEAL

S. ole KANTAI

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR