



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL OF KENYA**  
**AT NYERI**

**Civil Application 186 of 2010**

BETWEEN

**1 LEAH WAMBUI GICHOHI**  
**2 LEAH WANYARA GICHOHI.....APPLICANTS**

AND

**MAINA JOHANA MIANO.....RESPONDENT**

**(Application for extension of time to file an appeal out of time from the judgment of the High Court of Kenya at Nyeri, (Sergon, J) dated 25<sup>th</sup> January, 2010**

in

**H.C.SUCC. CAUSE NO 30 OF 2000**

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**RULING**

This is an application by Leah Wambui Gichohi and Leah Wanyara Gichohi the administratrix of the estate of Peterson Gichohi Hiuhu who died sometime in 1998 for three main orders namely extension of time within which to apply for leave to appeal from the ruling of the superior court dated 25<sup>th</sup> January 2010; leave to appeal against the said ruling; and an order that the notice of appeal filed and served upon respondent be deemed as duly filed.

It is clear from the documents annexed to the supporting affidavit that the applicants were given the grant of the letters of administration to the estate of the deceased on 10<sup>th</sup> March 2001 and that the grant was confirmed on 16<sup>th</sup> March 2001 and the three parcels of land comprising the state namely, LR Mwerua/Mukure/884; Mwerua/Mukure 883 and Mwerua/Mukure 235 distributed to the beneficiaries.

Thereafter on 25<sup>th</sup> June 2001, Maina Johana Miano the respondent herein filed an application for revocation of the grant on the grounds that the grant was obtained fraudulently by making of a false statement and by concealing some material facts. It is manifest from the impugned ruling that the respondent claimed that LR Mwerua/Mukure/235 belonged to him by virtue of a decree of in Kerugoya DM’s Civil Appeal No 2 of 1972 dated 12<sup>th</sup> May 1972 in which the E.G Mithamo DM1 ordered that L.R. Mwerua/Mukure/235 be registered in the name of the respondent. The respondent further stated that the deceased against whom the decree was made appealed to the High Court Nyeri, in C.A. 8 of 1973 against the decree but he died in September 1998 before he prosecuted the appeal, and, that subsequently on 21<sup>st</sup> July 2008 the appeal was marked as abated. By the time the application for annulment of the grant was heard, LR No Mwerua/Mukure/235 had been sub-divided into three portions namely, Mwerua/Mukure/1565 which was transferred to the two applicants; Mwerua Mukure/1563 which was transferred to Charles Muthee Gichohi and Mwerua/Mukure/154 which was transferred to Anthony Karuri Gichohi.

The superior court allowed the application for annulment of the grant limited to the suit land. The superior court in exercise of its inherent jurisdiction ordered the titles to the three sub-divisions to be cancelled and that title no Mwerua/Mukure/235 to be restored and reverted back to the deceased’s name.

The applicants intend to appeal against the decision of the superior court and state that the intended appeal is not frivolous and it has high chances of success because firstly, the respondent never prayed for cancellation of titles; secondly, the grant was partially annulled leaving some beneficiaries with nothing and, lastly, the petitioner had no knowledge of the civil proceedings and no fraud was committed.

The application is opposed by the respondent on the grounds, inter alia, that the intended appeal is a waste of time; that the suit land is at the stage of being transferred to him as he had already made an application for consent of the Land Control Board for the transfer; that the application is a delaying tactic and that it is just that this long standing dispute should be brought to finality.

By **rule 39 (b)** of Court of Appeal Rules (Rules).

**“where appeal lies with leave of the Court, application for such leave shall be made in the manner laid**

**down on rules 42 and 43 within 14 days of the decision against which it is desired to appeal or, where an application for leave to appeal has been made to the superior court and refused, within fourteen days of such refusal”**

The applicants depose that on 11<sup>th</sup> March, 2010 they made an application in the superior court for leave to appeal; that the application was dismissed on 9<sup>th</sup> July 2010 and that they were nevertheless allowed to seek leave to appeal in this Court within 10 days. The application was filed on 20<sup>th</sup> July 2010 within the said 10 days. The respondent does not deny that the appellants were allowed 10 days within which to apply for leave to appeal in this Court.

By **section 66** of Civil Procedure Act (Act) appeal from decrees and orders of the High Court lies to this Court and by **section 75 (1)** of the Act, an appeal lies of right from the specified orders and *shall lie from any other order with leave of the Court making such order or the Court to which an appeal would lie if leave were granted.*

I have considered the circumstances of the case. There is certainly a dispute regarding the ownership of LR. No. Mwerua/Mukure/235 which from the certificate of confirmation of grant measures approximately 7 acres. I am satisfied that the intended appeal is not frivolous and it is just that the applicant to be allowed to appeal. It seems to me that the application for leave to appeal was filed within the time stipulated by the superior court and the extension of time is therefore unnecessary. Accordingly I allow the application to the extent that:-

*(i) If I am wrong that extension of time to file the application is unnecessary then I extend time for filing the application to 16<sup>th</sup> July 2010 when the present application was filed and deem the application as filed within time.*

*(ii) I grant leave to the applicant to appeal from the ruling of the superior court delivered on 25<sup>th</sup> January 2010.*

*(iii) I extend the time for filing a notice of appeal by 14 days from date hereof.*

*(iii) The applicants to pay the expenses of the respondent related to this application which I assess as Shs. 3000/- within 14 days.*

**Dated and delivered at Nyeri this 4<sup>th</sup> day of November, 2010.**

**E. M. GITHINJI**

.....  
**JUDGE OF APPEAL**

I certify that this is a true copy of the original

**DEPUTY REGISTRAR**