



**In re Estate of Gachanga Ngure (Deceased) (Succession Cause
735 of 2013) [2025] KEHC 6862 (KLR) (28 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6862 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE 735 OF 2013**

M MUYA, J

MAY 28, 2025

IN THE ESTATE OF GACHANGA NGURE (DECEASED)

BETWEEN

PAUL MWANGI KAGEMA APPLICANT

AND

LOISE NJOKI GACHAGA 1ST RESPONDENT

LUCY WAMBUI KIBE 2ND RESPONDENT

RULING

1. The application dated 18th November, 2019, seeks the following orders:-
 1. That the Honourable Court be pleased to vary the orders of 18th October, 2018 and enlarge time within which the applicant to file record of appeal.
 2. That the costs be in the cause.
2. The grounds are:-
 1. That judgment was delivered by Mumbua T. Matheka J. on 18th October, 2018.
 2. That failure to file the record of appeal within the stipulated time on the part of the applicant has been occasioned by the fact that the applicant's advocate whom he has withdrawn did not advise him for the next judicial step to seek for justice and that the applicant only came to learn that he should have appealed.

This application is opposed. The grounds are to be found in the Replying Affidavit of the 1st Respondent.



Issues for Determination

i. Whether the prayer for extension of time is merited.

3. In the Court of Appeal case of *Edith Gichungu Koine v Stephen Njagi Thoithi* (2014) eKLR it was held:-

“Nevertheless, it ought to be guided by consideration of factors stated in many previous decisions of this court including, but not limited to the period of delay, the reasons for the delay, the degree of prejudice to Respondent if the application is granted and whether the matter raises issues of public importance amongst others”

4. Also in the Court of Appeal case of *Imperial Bank Limited (in receivership) and another v Alnasir Popat and 18 others* (2018) eKLR it was held:-

“Some of the considerations to be borne in mind while considering an application for extension of time include, the length of the delay involved, the reasons for the delay, the possible prejudice, if any, that each party stands to suffer depending on how the court exercise its discretion, the conduct of the parties the need to balance the interest of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal, the need to protect a party’s opportunity to fully agitate its dispute, against the need to ensure timely resolution of disputes, the public interest issues implicated in the appeal or intended appeal, and whether, prima facie, the intended appeal has chances of success or is a mere frivolity.....”

5. In the present application the applicant casts aspersions on his advocate for improper advice, that he did not advise him to appeal.

6. That assertion is not entirely correct as on 2nd October, 2019 he filed an application for review of the judgment dated 18th October, 2018 when same application for review was duly heard it was dismissed on 7th November, 2019 with a rider that the applicant was directed to file appeal in the court of appeal.

7. The applicants intends to file an appeal against a judgment which dismissed his summons for revocation of grant whereby he was claiming that his father Michael Kagema Gachaga was entitled to a bigger portion of the Deceased Estate. It is the contention by the Respondent that his father participated fully in the succession proceedings. That claim was dismissed during the applicant’s father’s life time.

8. The Estate has since been distributed and parties obtained title deeds. The other parties have accepted the outcome of the suit including the applicant’s mother.

9. The court is not satisfied therefore, that the intended appeal has high chances of success. It is also noted that there is no draft memorandum of appeal on record.

10. The reasons given for the delay of one year are not plausible as the applicant from the record of proceedings did actively participate in other applications before the court.

11. Now that distribution has been done, transmission effected and parties acquired title deeds allowing this application would greatly be prejudicial to them.

12. I find that this application has no merit and it is dismissed.

13. This being a family dispute each part to bear its own costs.



RULING DELIVERED IN OPEN COURT THIS 28TH DAY OF MAY, 2025.

In the presence of:-

1. Nanjala holding brief for Ombongi for the Applicant
2. Kebuka for the Respondent

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M. MUYA

JUDGE

