



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of Thomas Khongo Wasigully (Deceased) (Succession Cause 23 of 1999) [2024] KEHC 4129 (KLR) (26 April 2024) (Ruling)

Neutral citation: [2024] KEHC 4129 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT BUSIA

SUCCESSION CAUSE 23 OF 1999

WM MUSYOKA, J

APRIL 26, 2024

IN THE MATTER OF THE ESTATE OF THOMAS KHONGO WASIGULLY (DECEASED)

RULING

1. On 16th June 2022, a ruling was delivered herein, where the court granted orders on distribution of the estate herein, founded on an application dated 21st October 2021.
2. Gladys Auma Mugeni was aggrieved by that order, and she brought an application, dated 5th July 2022, for leave to file appeal against that ruling of 16th July 2022. Her application was filed on 6th July 2022. It, no doubt, is founded on the altruism that the *Law of Succession Act*, Cap 160, Laws of Kenya, does not provide for an appeal, from the decision of the High Court in exercise of its original jurisdiction to the Court of Appeal. It has been held in a number of cases, by the Court of Appeal, such as *Makbangu vs. Kibwana* [1996-1998] 1 EA 168 (Cockar CJ, Kwach & Shah, JJA) *Rhoda Wairimu Karanja & another vs. Mary Wangui Karanja & another* [2014] eKLR (Musinga, Ouko & Gatembu, JJA) and *Sophia Salim Gathiaka & another vs. Mariam Mbuve Abdalla & 9 others* [2016] eKLR (Mwilu, Azangalala & Kantai, JJA), that a decision of the High Court, in its original jurisdiction is appealable to the Court of Appeal, but such appeal can only be with leave of the High Court or the Court of Appeal.
3. The said application is also for leave to file appeal out of time. Under the *Civil Procedure Act*, Cap 21, Laws of Kenya, which ideally would not apply here, but in view of the decisions that I have cited above, the same would apply, of necessity, an appeal ought to be lodged within 30 days. The impugned ruling was delivered on 16th June 2022. The 30 days were to run out on 16th July 2022, if the weekends are not reckoned, and on 28th July 2022, when the weekends are reckoned. Either way, the application was not filed after unreasonable delay. There was no delay as it was filed within the 30 days. I reckon that the applicant did not file appeal as she required the leave of the court to do so.
4. The only issue for consideration is what the respondents raise in their written submissions, founded on *Rhoda Wairimu Karanja & another vs. Mary Wangui Karanja & another* [2014] eKLR (Musinga, Ouko & Gatembu, JJA), where it was stated that leave would not be denied where there would appear to be, prima facie, grounds which would merit consideration on appeal.



5. I have looked at the affidavit sworn by the appellant, in support of her application. Regrettably, the same is incredibly short, just 5 paragraphs, where she evinces a desire to appeal, and cannot do so without leave, and would suffer loss should the prayers be denied. She does not get into details on why she wishes to challenge the decision on appeal.
6. Whatever the case, this is a succession matter. Land is an emotional matter, more so family or ancestral land. There is need for the parties to get closure to these disputes. A second opinion, from a higher court could just provide closure.
7. Consequently, I shall give leave to the applicant to file an appeal against the decision of 16th June 2022, and to file the appeal out of time, now that 30 days have since expired. The leave is for 30 days. It is so ordered.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT BUSIA THIS 26TH DAY OF APRIL 2024

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Onsongo, instructed by Obwoye Onsongo & Company, Advocate for the applicant.

Ms. Achala, instructed by Abalo & Company, Advocate for the respondent.

