

KENYA / JUDGMENT

Rono v Rono & another

[2025] KECA 1949 (KLR)

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COURT

Court of Appeal

BEFORE

MA Warsame

CASE / FILE NUMBER

Civil Application E095 of 2025

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Rono v Rono & another (Civil Application E095 of 2025) [2025] KECA 1949 (KLR) (21 November 2025) (Ruling) Neutral citation:

[2025] KECA 1949 (KLR) Republic of Kenya In the Court of Appeal at Nakuru Civil Application E095 of 2025 MA Warsame, JA November 21, 2025 Between Emily Chepkirui Rono Applicant and Joseph Kiptonui Rono 1 st Respondent Sarah Chepng'eno Rono 2 nd Respondent (An application for extension of time to file an appeal out of time against the judgment of the High Court of Kenya at Kericho (Joseph Sergon, J.) delivered on 17th July 2025 in HC. Succ. Cause No. 191 of 2000)

Ruling

1. The applicant has filed this application dated 25 th September 2025 seeking extension of time to appeal out of time under Rule 4 of the Court of Appeal Rules . The applicant seeks to challenge the judgment delivered on 17 th July 2025 by Sergon J. in Kericho High Court Succession Cause No. 191 of 2000, where the court distributed the estate equitably amongst all beneficiaries and brought closure to the matter. A Certificate of Confirmation of Grant was issued on 21 st July 2025. 2. Under Rule 79 of this Court's Rules , the Notice of Appeal should have been filed within fourteen days of delivery of judgment, that is, by 31 st July 2025. The current application was filed on 30 th September 2025, resulting in a delay of sixty-one days from the expiry of the statutory period. 3. The applicant's stated reason for the delay is that her previous advocates, Mitei Kirui & Company, failed to promptly act on her instructions to lodge an appeal from the judgment. In support of this contention, the applicant has annexed a letter dated 19 th July 2025, which purportedly instructed the previous advocates to file an appeal. 4. The respondents have filed a replying affidavit dated 27 th October 2025 opposing this application. The respondents contend that the applicant has not provided proof that her previous advocates received her instructions, has not demonstrated when she discovered that no appeal had been filed, and has not shown

diligence in pursuing the matter. The respondents have also raised a preliminary objection regarding jurisdiction, contending that the applicant failed to seek leave to appeal from the High Court as required under Section 50 of the Law of Succession Act . However, questions of jurisdiction are properly matters for determination by the Court when the substantive appeal comes before it, and not at this interlocutory stage. 5. The principles governing applications for extension of time are well settled. As stated in *Abdul Aziz Ngoma v Mungai Mathayo* [1976] eKLR , this Court's discretion to extend time under Rule 4 only comes into existence after 'sufficient reason' for extending time has been established. As further elaborated in *Fakir Mohamed v Joseph Mugambi & two others* , Civil Application No. Nai . 332/04, the period of delay, the reason for the delay, diligence of the applicant, and prejudice to the respondent are all relevant factors to be considered. 6. I Have considered the application and the arguments advanced by both parties. While the applicant has annexed a letter dated 19 th July 2025 to her previous advocates, there is a fundamental distinction between a letter being dated and a letter being delivered. The applicant has provided no evidence whatsoever that this letter was actually sent to, received by, or acted upon by Mitei Kirui & Company. There is no proof of service, no acknowledgment of receipt, and no response from the previous advocates. A letter that exists only on paper but was never delivered is of no probative value in explaining delay. 7. Even assuming that the letter was delivered, the applicant has provided no evidence as to when she discovered that the appeal had not been lodged nor has she demonstrated through any correspondence, follow-up letters, acknowledgments, or communication records or that she made any inquiry about the progress of the appeal between 19 th July 2025, the date of the alleged instruction and 25 th September 2025 when this application was filed. 8. A diligent litigant would have maintained communication with her advocates following the alleged instruction to appeal. As was stated in *Bi-Mach Engineers Limited v James Kahoro Mwangi* [2011] eKLR . “The applicant had a duty to pursue his advocates to find out the position on the litigation but there is no disclosure that the applicant bothered to follow up the matter with his erstwhile advocates. It is not enough simply to accuse the advocate of failure to inform as if there is no duty on the client to pursue his matter. If the advocate was simply guilty of inaction, that is not an excusable mistake which the court may consider with some sympathy. The client has a remedy against such an advocate” 9. Consequently, I find that this application lacks merit and must fail. I make no orders to cost. DATED AND DELIVERED AT NAKURU THIS 21 ST DAY OF NOVEMBER, 2025. M. WARSAME JUDGE OF APPEAL

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