



**REPUBLIC OF KENYA**

**IN THE SUPREME COURT OF KENYA**

*(Coram: Mwilu; DCJ & VP, Wanjala, Njoki, Lenaola, & Ouko SCJJ)*

**APPLICATION NO. E035 OF 2025**

**-BETWEEN-**

**JULIA MBUTHU.....1<sup>ST</sup> APPLICANT**

**CHARITY MUTHONI.....2<sup>ND</sup> APPLICANT**

**-VERSUS-**

**EVELYN WANJA.....1<sup>ST</sup> RESPONDENT**

**NAOMI MWENDWA MAJAU..... 2<sup>ND</sup> RESPONDENT**

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*(Being an Application for extension of time to file a Notice of Appeal pursuant to Rule 15 (2) of the Supreme Court Rules, 2020)*

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**Representation:**

Ms. Kathurima h/b for Mr. Charles Kanjama, Advocate for the Applicants  
*(Muma & Kanjama Advocates)*

No appearance for the Respondents

**RULING OF THE COURT**

**[1] UPON** perusing the applicant's Notice of Motion dated 20<sup>th</sup> November 2025 and filed on 15<sup>th</sup> December 2025, seeking orders *inter alia*-

**a.** *Spent.*

**b. THAT** *this Honourable Court be pleased to grant leave to the Applicants to file and serve a Notice of Appeal out of time against the judgment of the Court of Appeal at Nyeri dated 29<sup>th</sup> July 2022 in **Civil Appeal No. 100 of 2019; Evelyn Wanja and another versus Gladys Nkirote M'Itunga;***

***In the alternative***

**c. THAT** this Honourable Court be pleased to grant leave to the applicants to file and serve a Notice of Appeal out of time against the Ruling of the Court of Appeal at Nyeri dated 11<sup>th</sup> October 2024 in **Civil Application No. E061 of 2023; Julia Mbuthu and another versus Evelyn Wanja and Another;**

**d.** Costs of this application be provided for.

**[2] TAKING INTO ACCOUNT** the orders of this Court issued on 17<sup>th</sup> December, 2025, directing that the application be served upon the respondents and parties to file supplementary submissions on the issue of the jurisdiction of this Court to hear and determine the application; and

**[3] FURTHER TAKING INTO ACCOUNT** the grounds on the face of the application, the affidavit in support of the Motion sworn by the 1<sup>st</sup> applicant on 20<sup>th</sup> November 2025, and written submissions dated 10<sup>th</sup> December 2025 wherein: the Applicants depone that on 29<sup>th</sup> July, 2018, the High Court in Meru, in **Meru Succession Cause No. 46 of 2013** (Estate of M'Itunga M'Ibutu), rendered judgement in their favour holding that the estate in dispute be governed by the law of intestacy and appointing the Applicants as joint administrators. On appeal, that judgment was set aside, by the Court of Appeal, and the respondents appointed as joint administrators of the estate; in 2023, the applicants submit that they discovered that the Will forming the basis of the Court of Appeal's decision had been forged by Julius Majau M'Itonga (*now deceased*); the matter was reported to the police, investigated, and, in a report dated 17 July 2023, it was confirmed that indeed the signature on the Will was forged; the applicants approached the Court of Appeal for review of its decision but the same was dismissed; the applicants are now concerned as, on 17<sup>th</sup> September 2025, the Chief of Kithangari Location visited their property and directed them to vacate within seven days, failing which forceful eviction would follow; and

**[4] AWARE** that the applicant's attribute the delay in filing the Notice of Appeal on first, the failure by their former advocate to file a Notice of Appeal despite clear instructions to do so; and second, the period taken by their current advocates to undertake consultations, research, and analysis of the constitutional implications arising from the discovery of the forged Will, as well as the appropriate procedure for

approaching this Court. They further submit that the delay was neither intentional nor indicative of abandonment of their right of appeal and rely on ***Nicholas Kiptoo Arap Korir Salat Vs the Independent Electoral and Boundaries Commission & 7 Others*** [2014] KESC 12 (KLR) to highlight the point that extension of time is a judicial and equitable remedy, depending on the circumstances of each case and guided by the overarching objective that litigation should be decided on the merits unless prejudice dictates otherwise; and

**[5] UPON** perusing the supplementary submissions dated 14<sup>th</sup> January 2026, wherein the applicants submit on the issue of *jurisdiction* as follows: that this Court is properly seized of jurisdiction under Article 163(4)(b) of the Constitution, as the intended appeal raises matters of general public importance transcending the private interests of the parties; Article 163(4)(b) establishes a special discretionary appellate jurisdiction, enabling this Court to pronounce itself on questions of law whose determination bears significant public interest. They contend, in addition, that this jurisdiction is operationalised by the Supreme Court Rules, 2020, and rely on ***Hermanus Philipus Steyn Vs Giovanni Gnecci-Ruscone*** [2013] KESC 55 (KLR) wherein this Court set out the principles governing what constitutes a matter of general public importance, namely, that the issue must transcend the circumstances of the particular case, raise a substantial point of law, have significant public interest, and have arisen and been determined in the courts below; and

**[6] FURTHER NOTING** that the applicants argue that their intended appeal meets this threshold and that it raises the fundamental question of whether courts can permit the distribution of an estate on the basis of a Will subsequently confirmed to be forged, and whether procedural finality should yield to substantive justice where fraud is discovered after the conclusion of appellate proceedings; they further contend that the issues raised affect a broad segment of the public, particularly in succession disputes across Kenya, where allegations of forged Wills, manipulation of estates, and disinheritance of vulnerable beneficiaries remain prevalent. Lastly, the applicants maintain that the issues now before this Court were canvassed before both the High Court and the Court of Appeal, whose determinations are now impugned. They submit in that regard that the discovery of fraud elevates the dispute beyond a private contest and properly invokes this Court's jurisdiction, particularly as it implicates Article 27 of

the Constitution, the protection of vulnerable beneficiaries, and the limits of testamentary freedom in the face of fraud and illegality; and

**[7] FURTHERMORE NOTING** that this Court in ***Sum Model Industries Ltd v Industrial and Commercial Development Corporation*** [2011] KESC 5 (KLR) set out the procedure for invoking this Court’s jurisdiction under Article 163(4)(b) of the Constitution as follows:

*“3.....In our view, the relevant provisions pursuant to which this application must be initiated are Article 163 (4) (b) of the Constitution as read together with rule (30) (2) of the Supreme Court Rules. It is clear to us that before an appeal under these provisions can be entertained, either the Supreme Court or the Court of Appeal must be satisfied that it involves a matter of general public importance. Upon being so satisfied, the Court may then issue a certificate for leave to appeal. We are surprised to note that Counsel for the applicant has not cited Article 163 (4) (b) of the Constitution as the basis for the application before us. Instead, the application has been brought (with the exception of rule 30 of the Supreme Court Rules) under either general provisions of the Constitution or provisions that bear no relevance to the application.*

.....

**5. This being an application for leave to appeal against a decision of the Court of Appeal, it would be good practice to originate the application in the Court of Appeal which would be better placed to certify whether a matter of general public importance is involved.**

*It is the Court of Appeal which has all along been seized of the matter on appeal before it. That Court has had the advantage of assessing the facts and legal arguments placed and advanced before it by the parties. Accordingly, that Court should ideally be afforded the first opportunity to express an opinion as to whether an appeal should lie to the Supreme Court or not. **If the applicant should be dissatisfied with the Court of Appeal’s decision in this regard, it is at liberty to seek a review of that decision by this Court as provided for by Article 163 (5) of the Constitution. To allow the applicant to disregard the Court of Appeal against whose***

**decision it intends to appeal and come directly to this Court in search of a certificate for leave, would lead to Abuse of the Process of Court.**”; and

[8] NOTING IN ADDITION that the provisions governing the filing of a Notice of Appeal and computation and extension of time as provided for under Rules 36 and 15 of the Supreme Court Rules, respectively, and this Court’s decision in ***Nicholas Kiptoo Arap Korir Salat Vs the Independent Electoral and Boundaries Commission & 7 Others (supra)*** wherein we set out the principles to be considered in determining an application for extension of time as follows:

- i. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court;***
- ii. A party who seeks extension of time has the burden of laying a basis thereof to the satisfaction of the Court;***
- iii. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis;***
- iv. Whether there is a reasonable reason for the delay, and the delay should, in any event, be explained to the satisfaction of the Court;***
- v. Whether there will be any prejudice suffered by the respondent if the extension is granted;***
- vi. Whether the application has been brought without any undue delay; and***
- vii. Whether in certain cases, like election petitions, public interest should be a consideration for extending time.***

[9] WE NOW OPINE AS FOLLOWS:

- i. On failure by the respondents to enter an appearance, the Notice of Motion dated 20th November 2025 is uncontested; the respondents did not enter an appearance, and from our examination of the record, the respondents were duly served with the application. Under Rule 34 (1)(b) of the Supreme Court Rules, 2020, where a party fails to attend a hearing, the Court may proceed as it deems fit. Notwithstanding the lack of opposition, this Court has a duty to consider the***

facts and determine the application on its merits. That is why in ***Konchellah Vs Sunkuli & 2 Others*** [2018] KESC 58 (KLR), this Court observed as follows:

***“Be that as it may, as a court of Law, we have a duty in principle to look at what the application is about and what it seeks. It is not automatic that for any unopposed application, the Court will as a matter of course (sic) grant the sought orders. It behooves the Court to be satisfied that prima facie, with no objection, the application is meritorious and the prayers may be granted. The Court is under a duty to look at the application and without making any interferences on facts point out any points of law, such as any jurisdictional impediment, which might render the application a non-starter.....”.***

- ii. On the jurisdiction of this Court to hear and determine the application, the Applicants submit that they invoked this Court's jurisdiction under Article 163 (4) (b) of the Constitution. In that context, and from our examination of the record, this is a succession matter, as the contestation in the superior courts concerned the administration of the Estate of M'Itunga M'Itubu. Before this Court, however, the applicants assert that the matter has transcended private succession interests and is now a matter of general public importance. They argue on that issue that the intended appeal raises questions affecting the administration of justice, including the intersection of testamentary freedom with equality and non-discrimination guarantees, the protection of vulnerable beneficiaries, and the integrity of judicial processes in succession matters, warranting this Court's intervention.
  
- iii. Noting the above contentions, the jurisdiction of this Court under Article 163 (4)(b) of the Constitution is not automatic; it requires the applicants to conduct a pre-requisite exercise of seeking certification from the Court of Appeal or this Court that the intended appeal raises a matter of general public importance. We have examined the pleadings before us, and no such certification has been obtained or applied for by the Applicants.

- iv. Notably, the applicants have also argued violations of their constitutional rights and freedoms, specifically, Article 27 of the Constitution on equality and freedom from discrimination, and state that the issue was canvassed before the superior courts, whose determination is now impugned. It is evident to us in that regard that the applicants are conflating the jurisdictions of this Court under Article 163 (4)(a) and 163 (4)(b) of the Constitution and the different procedural routes for approaching this Court under the two provisions.
- v. Ultimately, as no certification has been granted as required under Article 163(4)(b) of the Constitution, any extension of time to file a Notice of Appeal would be a waste of judicial time. Accordingly, we find that the jurisdictional threshold set out under Article 163 (4) (b) of the Constitution has not been met and hereby dismiss the application.
- vi. Noting that the respondents did not participate in these proceedings, we shall not make orders as to costs.

**[10] CONSEQUENTLY**, we make the following orders:

- i. The applicant's Notice of Motion dated 20<sup>th</sup> November 2025 is hereby dismissed; and*
- ii. There shall be no orders as to costs.*

It is so ordered.

**DATED and DELIVERED at NAIROBI this 24<sup>TH</sup> day of MARCH 2026**

.....  
**P.M MWILU**  
**DEPUTY CHIEF JUSTICE & VICE-PRESIDENT OF**  
**THE SUPREME COURT**

.....  
**S.C WANJALA**  
**JUSTICE OF THE SUPREME COURT**

.....  
**NJOKI NDUNGU**  
**JUSTICE OF THE SUPREME COURT**

.....  
**I. LENAOLA**  
**JUSTICE OF THE SUPREME COURT**

.....  
**W. OUKO**  
**JUSTICE OF THE SUPREME COURT**

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

**REGISTRAR,  
SUPREME COURT OF KENYA**

