



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO 2543 OF 2004**

**IN THE MATTER OF THE ESTATE OF THE LATE JOSEPH  
KINGORI NJOGE (DECEASED)**

**JOHN MWANGI KINGORI..... 1<sup>ST</sup>  
APPLICANT**

**DANIEL GICHERU KINGORI..... 2<sup>ND</sup>  
APPLICANT**

**PETER MACHARIA KINGORI..... 3<sup>RD</sup>  
APPLICANT**

**VERSES**

**ANTHONY WAMBUGU.....  
RESPONDENT**

**RULING**

1. In their application dated 15<sup>th</sup> July 2024 the Applicants are praying for the following orders:-

**(a) That the court be pleased to grant the Applicants leave to appeal against the courts ruling delivered on 20<sup>th</sup> June 2024.**

**(b) The court be pleased to grant stay of execution of its ruling dated 20<sup>th</sup> June 2024 pending the filing of the intended appeal.**

2. The application is based on the grounds thereof and the sworn affidavit of John Mwangi Kingori dated the same day.
3. The said application essentially deposes that the Applicants were not happy with the decision of this court dated 20<sup>th</sup> June 2024 and they intend to appeal against it at the Court of Appeal. They argued that should the stay not be granted they shall suffer loss as the Respondent will seek to execute the orders of the court touching on land parcel number Laikipia/Marmanet/328 and the appeal shall be rendered nugatory.
4. In his opposing affidavit sworn on 8<sup>th</sup> August 2024 the Respondent has argued that the ruling of this court was proper as it found that the issues which the Applicants had raised had been decided and were therefore *res judicata*. The Respondent gave chronology of how the matter had been handled by several judges including Judge Mativo (JA) at the Court of Appeal.
5. That in all the steps taken right from 1983 the Respondent had lost and therefore the current application was meant to delay the matter further.
6. The court directed the parties to file written submissions which they both complied and the court has perused the same extensively together with the cited authorities.

7. The Applicants support their position that unless stay of execution is not granted, they stand to suffer loss and damage. They also relied on Order 42 rule 2 of the Civil procedure rules and implored this court to allow the application.
8. The Respondent as expected took the opposite view and submitted that there was no plausible reason why this court should allow the application noting that they had exhausted their right having failed initially at the Court of Appeal. The whole appeal was therefore to simply delay the finalization of this matter.
9. He submitted that leave to appeal to the appellate court under Cap 160 was not necessarily automatic but it depends on each case. In this case there was no sufficient reason to allow it.

### **Analysis And Determination**

10. It is trite law now that there is no automatic appeal from this court to the court of appeal when it comes to succession matters. See Rhoda Karanja & Another vs. Mary Wangui Karanja & Another (2014) eKLR.
11. In the instant case it is evident that several judges have litigated over this matter and from the record the Applicants' prayers have been disallowed.
12. The Court of Appeal in Civil Appeal Number E167 of 2022 Mativo J A dismissed the Applicant's appeal.

13. This of course does not mean that this court cannot allow the Applicants another opportunity to test the ruling of this court in the said appellate court. They have every right. That right however must be tampered with the rights of the Respondent and the other members of the deceased family who must continue with this matter which has been around since 1983.
14. In the premises I shall allow the application for leave to file an appeal to the appellate court. The prayers for stay however are not granted for the simple reason that whatever the appellate court shall find, the law is capable of reversing any action that might have been taken in regard to the suit property.
- 15. The application is therefore allowed as hereunder:-**
- (a) The Applicants granted leave to file and serve their appeal within 14 days from the date herein.**
  - (b) The prayer for stay pending appeal is denied.**
  - (c) Costs to the Respondent.**

**Dated signed and delivered at Nairobi vide video link this 31<sup>st</sup> day of October 2024.**

**H K CHEMITEI**  
**JUDGE**