

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION CAUSE NO. 2274 OF 2012

IN THE MATTER OF THE ESTATE OF PATROBA NDURI MBAI (DECEASED)

RULING

1. On 26th October 2016 I delivered a ruling in which I dismissed an application dated 26th September 2014. The applicant in that application is dissatisfied with that ruling and has filed a Motion dated 23rd November 2016 for grant of leave to appeal against the orders made in that ruling. To that Motion the respondents had filed grounds of opposition dated 3rd February 2017, and a notice of preliminary objection of even date. The application was disposed of by way of written submissions. I have perused the same and noted the arguments made therein.

2. I have scrupulously perused the court record and noted that no notice of appeal was filed by the applicant as required by Rule 75 of the Court of Appeal Rules, which states that –

‘(1). Any person who desires to appeal to the Court shall give notice in writing, which shall be lodged in duplicate with the registrar of the superior court.

(2). Every such notice shall, subject to Rules 84 and 97, be so lodged within fourteen days of the date of the decision against which it is desired to appeal.’

3. No leave is required to file a notice of appeal, and no appeal can lie without such notice, whether that appeal is of right or is upon leave of court. The provision in Rule 75 of the Court of Appeal Rules is couched in mandatory language. Where no notice of appeal has been filed, there cannot be any basis for grant of leave to appeal. The Motion dated 23rd November 2016 is clearly not merited. I shall dismiss the same with costs.

DATED, SIGNED and DELIVERED at NAIROBI this 29TH DAY OF SEPTEMBER, 2017.

W. MUSYOKA

JUDGE