



**In re Estate of the Late M'Rimberia Kibichi (Deceased) (Succession Cause 669 of 2014) [2024] KEHC 6200 (KLR) (23 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6200 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 669 OF 2014  
TW CHERERE, J  
MAY 23, 2024**

**IN THE MATTER OF THE ESTATE OF THE LATE M'RIMBERIA KIBICHI (DECEASED)**

**BETWEEN**

**MARTHA ITEGI M'IKIARA ..... 1<sup>ST</sup> ADMINISTRATOR**

**JOHN MURUGU ..... 2<sup>ND</sup> ADMINISTRATOR**

**AND**

**MOSES MBAYA ..... APPLICANT**

**RULING**

1. By a ruling delivered on 20<sup>th</sup> December, 2023, this court dismissed summons dated 18<sup>th</sup> July, 2023 filed on 27<sup>th</sup> July, 2023 in which Moses Mbaya (Applicant) sought cancellation of titles issued on the strength of certificate of confirmation dated 10<sup>th</sup> June, 2020 and rectified on 08<sup>th</sup> February, 2023.
2. By summons dated 08<sup>th</sup> January, 2024, Applicant seeks leave to appeal the ruling delivered on 20<sup>th</sup> December, 2023 and stay of execution of the Certificate of Confirmation of Grant.
3. The summons is based mainly on the ground that the Applicant is dissatisfied with the mode of distribution and is supported by Applicant's affidavit sworn on 08<sup>th</sup> January, 2024 reiterating the grounds on the face of the application
4. John Murugu (1<sup>st</sup> Administrator/Respondent) opposed the application by way of a replying affidavit sworn on 15<sup>th</sup> May, 2024 in which he avers that the grant has been implemented and there is nothing to be stayed.
5. I have considered the summons and I note that under the provisions of the [Law of Succession Act](#) (cap.160), there is no specific provision for filing an appeal to the Court of Appeal from a succession cause heard and determined by the High Court. However, courts have held that an appeal to the Court of Appeal can be filed, subject to leave being granted by the High Court or the Court of Appeal. This



position was reiterated by the Court of Appeal in the case of Rhoda Wairimu Karanja & Another – vs- Mary Wangui Karanja & Another (2014) eKLR when the court stated as follows –

“We think we have said enough to demonstrate that under the Law of Succession Act, there is no express automatic right to appeal to the Court of Appeal, that an appeal will lie to the Court of Appeal from the decision of the High Court exercising original jurisdiction with leave of the High Court or where the application for leave is refused, with leave of this court”

6. Article 50 of the Constitution guarantees any person the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body and that includes an appeal from any decision as by law provided.
7. From the foregoing, I find that it is the interest of justice to grant the order for leave to appeal.
8. Concerning stay of implementation of the Certificate of Confirmation of Grant, the 1<sup>st</sup> Administrator/Respondent has by his replying affidavit sworn on 14<sup>th</sup> November, 2023 and filed on 16<sup>th</sup> November, 2023 demonstrated that the Certificate of Confirmation of Grant has already been executed and title deeds issued to the respective beneficiaries.
9. The Court does not, and ought not to be seen to, make Orders in vain; otherwise the Court would be exposed to ridicule, and no agency of the Constitutional order would then be left in place to serve as a guarantee for legality, and for the rights of all people. (See B vs. Attorney General [2004] 1 KLR 431)
10. From the foregoing, it is hereby ordered as follows:
  1. Applicant is granted leave to appeal this court’s ruling 20<sup>th</sup> December, 2023
  2. The Certificate of Confirmation of Grant in this cause has already been executed and is incapable of being stayed

**DATED AT MERU THIS 23<sup>RD</sup> DAY OF MAY 2024**

**T. W. CHERERE**

**JUDGE**

Appearances

Court Assistant - Morris Kinoti

Applicant - Mr. Kimathi for L. Kimathi Kiara & Co. Advocates

For Respondents - Mr. Mwirigi for Mwirigi & Nzomo Company Advocates

