



**In re Estate of Nathan A K Morogo alias Nathna Kipserem Arap Morogo alias Nathan Morog (Deceased) (Succession Cause 84 of 2019) [2024] KEHC 12721 (KLR) (22 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12721 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 84 OF 2019  
RN NYAKUNDI, J  
OCTOBER 22, 2024**

**IN THE MATTER OF THE ESTATE OF NATHAN A K MOROGO ALIAS  
NATHNA KIPSEREM ARAP MOROGO ALIAS NATHAN MOROG (DECEASED)**

**BETWEEN**

**ABRAHAM KIRWA MOROGO ..... 1<sup>ST</sup> PETITIONER  
DAVID KIPRPTICH MOROGO ..... 2<sup>ND</sup> PETITIONER  
PEREZ CHEPCHOGE MOROGO ..... 3<sup>RD</sup> PETITIONER  
EZEKIEL KIPSANG MOROGO ..... 4<sup>TH</sup> PETITIONER**

**AND**

**DANIEL KIPCHIRCHR MOROGO ..... 1<sup>ST</sup> OBJECTOR  
MOSESO MOROGO ..... 2<sup>ND</sup> OBJECTOR  
MILKA CHEPKOECH SAWE ..... 3<sup>RD</sup> OBJECTOR**

**RULING**

1. This court has a pending application dated 19.8.2024 in which directions were given on 25.9.2024 by Justice Wananda to canvas the motion within the prescriptive provisions of the law, but the parties without jurisdiction have elected to file a consent dated 25.9.2024 allocating themselves powers to grant themselves leave to appeal to the next superior court, As a session judge the request of the consent has been placed before me for adoption as an order of this court.
2. The law on leave to appeal a probate or intestate decision of the trial court to the court of Appeal is a juridical procedure that cannot be ousted by the parties. Perhaps it is most plausible to reiterate the principle set out by the court of Appeal in *Speaker of National Assembly vs Karume* (2022) 1992 KLR 21. Where it is stated as follows: “ Where there is a clear procedure for redress of any particular grievance



prescribed by the constitution or an Act of Parliament, that procedure should be strictly followed. Accordingly, the special procedure provided by any law must be strictly adhered to since there are good reasons for such special procedure

3. I also take the view that the issue to be determined in an application for leave to appeal and stay of execution of the judgement of a trial court revolves around the following conditions:
  - a. That the Appeal has been filed without unreasonable delay
  - b. That the appeal or intended appeal is arguable and not frivolous
  - c. That the order of stay sought if not granted will render the appeal or the intended appeal nugatory.
  - d. That the intended appellant /appellant would suffer substantial loss which may not be remedied by compensation
  - e. That there is sufficient cause for leave to be granted to an aggrieved party to file an appeal.
4. The court by this consent has not had an occasion to settle the question of leave and the conditions precedent under order 42 rule 6(1) of the Civil Procedure Rules as read with Rule 73 (1) of the Probate and Administration Rules. It is clear to me that a party cannot file a consent which is against both procedural and substantive law and expect the court to adopt it as an order of the court defining the rights of the parties. In these circumstances, I declare the consent purported to be filed and adopted as a court order to be invalid. The same is struck out with no orders as to costs.

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 22<sup>ND</sup> DAY OF OCTOBER 2024.**

.....

**R. NYAKUNDI**

**JUDGE**

