



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Manyara Kamau (Deceased) (Civil Appeal E143 of 2024)  
[2024] KEHC 13450 (KLR) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13450 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CIVIL APPEAL E143 OF 2024  
DO CHEPKWONY, J  
OCTOBER 17, 2024  
IN THE MATTER OF ESTATE OF MANYARA KAMAU (DECEASED)**

**BETWEEN**

**FRANCIS KIARIE MANYARA ..... APPELLANT**

**AND**

**ELIZABETH MUTHONI MANYARA ..... RESPONDENT**

**RULING**

1. The Appellant moved the court through a Memorandum of Appeal dated 12<sup>th</sup> August, 2024 in which he sought to appeal against a ruling delivered by Hon. P. M. Mugure in Limuru Sucession Cause No.104 of 2017, In the Matter of the Estate of Manyara Kamau on 11<sup>th</sup> June, 2021. Additionally filed a Notice of Motion application dated 12<sup>th</sup> August, 2024 under Certificate of Urgency seeking the revocation or annulment of the Certificate of Confirmation of grant and or staying the execution of the said Certificate of Confirmation of Grant issued on 1<sup>st</sup> July, 2024.
2. In response, the Respondent filed Notice of preliminary Objection dated 16<sup>th</sup> October, 2024, in which she raised a Preliminary Objection to the appeal for being incompetent, bad in law and fatally defective for having been filed out of time without leave of court contrary to the provisions of Section 79G of the *Civil Procedure Act* and Order 9 Rule 9 of the Civil Procedure Rules, 2010.
3. When the matter came up on 17<sup>th</sup> October, 2024, it was brought to court's attention that there was a Notice of Withdrawal dated 17<sup>th</sup> October, 2024, seeking to have the Memorandum of Appeal withdrawn with no orders as to costs. The Respondent's Counsel indicated that it did not have any objection save for payment of costs since his clients were in court. The Appellant's Counsel then indicated that the matter was coming up for Mention for purposes of compliance and therefore there was no need for the Respondents to have travelled to court. He was however willing to pay their travel expenses.



4. In rejoinder, the Respondent stated that he was not seeking the travel expenses but the costs of defending the appeal. He further indicated that the matter relates to family members who have disputed the distribution of their father's property and therefore the court should make an order for costs.

5. Having heard both parties, this Court finds that, firstly, this is a matter which was recently filed in court in August, 2024 and thus not much has taken place. It would therefore not be appropriate to issue an order for costs. Secondly, the court notes that the appeal relates to family members and therefore the court is inclined to abide by the principle that each party should bear their own costs. On this finding, the court relies on the case of *Akram & Another -vs- Akram & 5 Others* (Family Appeal E004 of 2023) [2024] KEHC 4887 (KLR) (7 May 2024) (Ruling), where it was held:-

“In my view, costs would not be appropriate in the circumstances of this matter. This is so because this is a dispute between family members. An award of costs will not promote reconciliation between parties. In any case, the appeal was withdrawn before there was substantive prosecution so that the Succession matter could be heard and determined. Withdrawal of this matter saved precious judicial time and enabled the Court to focus on determining the dispute regarding the confirmation of the grant. I am not convinced that the appeal was filed in faith or was actuated by malice or ill will.”

6. Based on the foregoing, the court proceeds to allow the withdrawal of the Memorandum of the Appeal dated 12<sup>th</sup> August, 2024 with no orders as to costs. The file be and is hereby marked as closed.

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 17<sup>TH</sup> DAY OF OCTOBER , 2024.**

**D. O. CHEPKWONY**

**JUDGE**

In the presence of:-

Mr. Stephen Muhia counsel for Appellant

Mr. Masaviru counsel for Respondent

Court Assistant - Martin

