



REPUBLIC OF KENYA



KENYA LAW

THE NATIONAL COUNCIL FOR LAW REPORTING

Where Legal Information is Public Knowledge

**In re Estate of Prof Henry Okello Ayot - Deceased (Succession Cause
5 of 2020) [2024] KEHC 14912 (KLR) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 14912 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
SUCCESSION CAUSE 5 OF 2020
A ONG'INJO, J
OCTOBER 17, 2024**

N THE MATTER OF THE ESTATE OF: PROF. HENRY OKELLO AYOT - DECEASED

BETWEEN

ELAINE OGALO AYOT APPLICANT

AND

OMONDE KISERA & 3 OTHERS & 3 OTHERS RESPONDENT

RULING

1. Elaine Ogalo Ayot the Objector/Applicant herein filed an Application dated 17th November, 2024 seeking leave to appeal against the decision delivered on 19th December, 2023 dismissing her Objection. She also seeks that the court deems the Notice of Appeal dated 29th December, 2023 and filed on even date as duly filed.
2. The Applicant further sought that this court be pleased to stay the proceedings on the cause herein pending hearing and determination of the intended Appeal to the Court of Appeal.
3. Costs of the application were also sought.
4. The Application is premised on the grounds on the face of the application and affidavit of the Applicant sworn on 17th November, 2024.
5. The Application was opposed by the 1st Respondent's Replying Affidavit sworn on 23rd February 2024.
6. This court gave direction on 26.2.24 that the Applicant files a further affidavit concurrently with submissions within 14 days. Upon service the Respondent was also to file submissions within 14 days.
7. On 16.9.2024 Mr. Olweyo Advocate for the Applicant indicated that he had filed their submissions in April 2024 but that the Respondent submissions had raised issues which they needed to respond to. The Applicant was granted leave to file further submissions within 7 days.



8. The applicant further submissions was filed on 16.10.24 and this court has heard the opportunity to consider the application, response and submissions by parties and find as submitted by Mr. Kisera Advocate that there are no proceedings for which an order of stay can be granted as prayed the applicant.
9. The judgment delivered on 19.2.2023 determined the cause herein as per the deceased written Will which is not contested.
10. In regard to application for leave to appeal against the Judgment of 19.12.23 Section 50(1) of the Law of Succession provides that appeals in succession causes from the magistrate's courts are final. Section 50 (2) of the Act provides that appeals from Kadhis courts to the High Court can be appealed against with leave of the court to the Court of Appeal. However, where the High Court makes a determination while exercising its original jurisdiction in succession causes an appeal can be preferred with the leave of the court. What needs to be considered is whether the Applicant has satisfied the Court for the exercise of discretion to grant the order for leave to appeal.
11. I have perused the application and the submissions dated 12.4.2024 as well as the judgment of the trial Judge delivered on 19.12.2023 and find that the applicant has not established that she has an arguable appeal.
12. The cause herein is based on the last Will and testament of the deceased which is not contested. The 1st Petitioner is not the only Executor of the said Will and the court could not have legally gone against the Will of the deceased to appoint the Objector as Executor of the Will when the deceased did not intend so.
13. The Application for stay of proceedings and leave to appeal are disallowed. Costs of the Application to the Respondents.

DELIVERED DATED AND SIGNED AT MIGORI THIS 17TH DAY OF OCTOBER, 2024.

.....

A. ONG'INJO

JUDGE

Ruling delivered in the presence of

Victor/ Lola – Court Assistants

Mr. Kisera Advocate, for the Petitioner /Executor/Respondent

Applicant / Objector – No appearance

Ms. Ngeri, Omiti & Bush Advocate for the Applicant

Mr. Olweya Advocate

