



**In re Estate of the Late Charles Kuguru (Deceased) (Succession Cause
486 of 2001) [2023] KEHC 20114 (KLR) (13 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20114 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 486 OF 2001
HK CHEMITEI, J
JULY 13, 2023**

IN THE MATTER OF THE ESTATE OF THE LATE CHARLES KUGURU(DECEASED)

BETWEEN

VINCENT MUTURI MWAURA & 3 OTHERS APPLICANT

AND

VIRGINIA MUMBI KUGURU & ANOTHER RESPONDENT

RULING

1. In their amended summons dated November 11, 2022 the applicants pray for the following orders;
 - (a) That there be stay of execution of the decree arising out of the judgement delivered on 14th December 2021 and restrictions be registered on title number Dundori Mugwathi Block 1/972, Rimuruti Maundu ni Meri /706 and Nyandarua /Milangine /613 pending the hearing and determination of the intended appeal
 - (b) The applicants be granted leave to appeal to the court of appeal against the judgement of this court delivered on 14th December 2021.
 - (c) That the Notice of Appeal filed on the 22nd December 2021 be deemed to have been properly filed.
 - (d) Costs be provided for.
2. The application is based on the grounds on the face of the application and the sworn affidavit of Eric Wainaina Muraguri sworn on 11th November 2022.
3. In the application the applicant deposes that they were dissatisfied with the judgement of this court dated 14th December 2021 and that they are seeking to appeal against the same. In line with the



authority of *Rhoda Wairimu Karanja & Another v. Mary Wangari Karanja & Another* (2014) eKLR there was no automatic right of appeal without the leave of the court.

4. He deponed that unless the application is allowed they stand to lose as the respondents will execute and the appeal shall be rendered nugatory. He states that the intended appeal has a good chance of success.
5. In her replying affidavit sworn on 29th November 2022 Virginia Mumbi Kuguru opposed the application on the grounds that the same was filed very late in the day and it was therefore an abuse of the court process. That the same was an afterthought and meant to delay the matter longer.
6. She went on to deny that the applicant had any part in the estate since her mother denied the same and therefore the appeal has no chance of success.
7. The court directed the parties to file written submissions which they complied and the court has perused the same.
8. The applicant contended that unless the application is allowed the appeal shall be rendered nugatory and that the same was not brought late in the day. In any case the leave of the court has to be obtained.
9. The respondents on their part have argued that the said application is a non-starter since it was established that the applicants had no part in the estate. They reiterated that the application was filed late in the day and it ought to be disallowed.
10. The court has perused the application and it is evident that at the time of delivery of the judgement the applicants did not sought the leave of the court to file the appeal. It thus becomes necessary that they must obtain the said leave.
11. Was the application made late in the day.? I do not think so. The notice of appeal from the available court record shows that it was filed within the requisite time. I think the only issue is that the applicants must have realised the necessity of seeking courts leave later in the day and that is why it sought to amend the summons.
12. Do the respondents stand to suffer any loss, harm or damage.? I think to be fair all that they stand to suffer is the conveyancing instruments in their favour being signed to transmit the parcels to them as generally I think they are in physical occupation of the land. Obviously the time factor is another loss they stand to suffer but again an appeal exercise must be allowed as it is a constitutional right.
13. However, taking the totality of the facts herein I think it is necessary that the applicants be granted another chance at the Court of Appeal. Being a family matter, it becomes necessary to reach a finality legally speaking.
14. In the premises I find that there is merit in the application and the same is hereby allowed as prayed with costs to the respondents.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAKURU THIS 13TH DAY OF JULY 2023.

H K CHEMITEI

JUDGE

2

