



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Njobu v Muriuki & another (Civil Appeal E118 of 2022)  
[2024] KEHC 11980 (KLR) (3 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 11980 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CIVIL APPEAL E118 OF 2022  
RM MWONGO, J  
OCTOBER 3, 2024**

**BETWEEN**

**JULIA WANJIRA NJOBU ..... APPELLANT**

**AND**

**JOSEPH MWANGI MURIUKI ..... 1<sup>ST</sup> RESPONDENT**

**WILSON KAGO MURIUKI ..... 2<sup>ND</sup> RESPONDENT**

*(An application arising from the judgment of Hon. Lady Justice L.  
Njuguna delivered on 3rd day of November 2023 to file a Second Appeal)*

**RULING**

**Background**

1. The appellant filed an appeal in the High Court against the ruling delivered on 17<sup>th</sup> November, 2011 by Hon. S. M. Nyaga (SRM) sitting at Baricho in SPM Succession Cause No.106 of 2019 in the Estate of Samuel Muriuki Githiri Alias Muriuki Githiri.
2. In its judgment delivered on 3<sup>rd</sup> November 2011, this Court found that the appeal lacked merit and dismissed the same.
3. Dissatisfied, the Appellant has filed this application in which she seeks leave to file a second appeal at the Court of Appeal. The prayers are substantially as follows:
  - 1) That the Honourable court be pleased to stay execution of its judgment delivered on 3.11.2023 pending the hearing and determination of the intended appeal.
  2. That the Honourable court be pleased to stay execution of the certificate of confirmation of grant issued on 15.12.2022 pending the hearing and determination of the intended Appeal.



3. That the Honourable Court be pleased to issue orders of status quo in respect to the suit land LR. Mwerua/Kanyokora/3 pending the hearing and determination of the intended appeal at Court of Appeal at Nyeri.
  4. That the Honourable Court be pleased to grant leave to the Applicant to file a second appeal at the Court of Appeal.
  5. That upon consideration of prayer (5) five above the Honourable Court be pleased to deem fit the Notice of Appeal filed herein as duly filed.
4. The application is based on the grounds on the face of the application, and the supporting affidavit of Julia Wanjira Njobu in which she avers, inter alia that:
- i. The judgement in this matter was delivered on 3.11.2023 dismissing my appeal.
  - ii. The Respondents herein are my family members since I am married to their uncle, deceased.
  - iii. There is now eminent risk of being evicted from a place I have known as home since 1975.
  - iv. She has instructed her advocate on record to institute an appeal and has requested and paid for certified copies of proceedings and judgment.
  - v. Her advocate on record has further filed a Notice of Appeal.
  - vi. The Respondents herein will suffer no prejudice if the status quo are maintained pending the hearing of the intended appeal.
5. In reply, the respondents filed grounds of opposition dated 18<sup>th</sup> November, 2023; The grounds are that: the application lacks merit, is incompetent, bad in law and an abuse of the court process.
6. Parties filed written submissions as directed by the court.

#### **Appellant's submissions**

7. As to whether the appellant has a right to a second appeal: The applicant contends that Section 50(1) of the *law of Succession Act* limits appeals arising from any orders or decree by a resident Magistrate to this Court whose decision shall be final. Further that the High Court and Court of Appeal have nevertheless expanded the scope of the jurisdiction to grant leave.
8. She relied on the case of Rhoda Wairimu Karanja & another v Mary Wangui Karanja & another, where the Court of Appeal stated that in view of the adversarial nature of litigation in our system of justice, it would be unconscionable to allow as final the decision of a single judge, and limit the right of appeal to the High Court, especially now when the Court hierarchy has been opened by the creation of the supreme court as an apex court.
9. The applicant also cited the case of *Obange & another v Oganyo & 4 others (Civil Appeal E033 of 2021)* where the court invoked Article 48 and 50(1) of *the Constitution* on the right to access justice and the right to a fair hearing.
10. Further, she relies on the decision in the case In re Estate of Gachoki Ruoya (Deceased) [2020] eKLR and submits that the applicant has demonstrated that the Court has the discretion to reopen the matter, and has jurisdiction to grant the Applicant leave to appeal to the Court of Appeal.



11. The Respondents contend that it is trite law that there is no right to a second appeal against the decision of the High Court exercising its appellate jurisdiction in succession matters. They rely on Section 50(1) of the *Law of Succession Act* Cap 160.
12. The applicant also relies on the Court of Appeal case of Hafswa Omar Abdalla Taib & 2 Others v Swaleh Abdalla Taib [2015] eKLR which interpreted the provisions of Section 50 (1) of the *Law of Succession Act*, Cap 160 to the effect that a court has no jurisdiction unless it is donated by *the Constitution* or the law.
13. Finally, the respondent submits that this court lacks jurisdiction to grant the appellant leave to file a second appeal from the decision of this court. Since there is no possibility of a second appeal, the prayers sought in this application have no basis, and should be dismissed with costs to the Appellant.

### **Issues for Determination**

14. The only issue for determination: Whether the appellant has a right to a second appeal.

### **Analysis and Determination**

15. The law on the issue of a second appeal is found in Section 50(1) of the *law of Succession Act*. The section limits appeals arising from any orders or decree by a Resident Magistrate to this Court, and expressly states that, This Court's decision shall be final. It provides as follows:

“(1) An appeal shall lie to the High Court in respect of any order or decree made by a Resident Magistrate in respect of any estate and the decision of the High Court thereon shall be final.”

15. However, the High Court and Court of Appeal have expanded the scope of the jurisdiction to grant leave. In the case of Rhoda Wairimu Karanja & another v Mary Wangui Karanja & Another [2014] eKLR the Court of Appeal stated as follows:

“We do not think the framers of section 50 of the *law of succession Act* intended to limit appeals to this Court and allowing decisions of the Kadhis courts be challenged up to this court.

In view of this and given the adversarial nature of litigation in our system of justice, it would be unconscionable to allow as final the decision of a single judge, and limit the right of appeal to the High Court, especially now when the Court hierarchy has been opened by the creation of the supreme court as an apex court.”

16. Against this position, the respondent submitted that this court lacks jurisdiction to grant the appellant leave to file a second appeal from the decision of this court.
17. The Court of Appeal in the case of Hafswa Omar Abdalla Taib & 2 Others v Swaleh Abdalla Taib [2015] eKLR interpreted the provisions of Section 50 (1) of the *Law of Succession Act*, Cap 160 as follows:

“Time and again it has been stated that jurisdiction is everything and if a court has no such jurisdiction, it must down its tools immediately. The Supreme Court has held in several of its authorities that a court's jurisdiction flows from *the Constitution*, Statute, precedent or both. Such jurisdiction cannot be assumed or donated by the parties or by the fiat of court. In this case the appellate jurisdiction in respect of Succession Causes has been donated by section 50 of the *Law of Succession Act*. From this provision, it is clear that decisions from the



magistrates' courts in Succession Causes are appealable to the High Court; whose decision on such an appeal is final.”

18. Nevertheless, the Court of Appeal held that leave could be required the High Court or the Court of Appeal. In the case of Rhoda Wairimu Karanja (supra) it was stated:

“We think we have said enough to demonstrate that under the *Law of Succession Act*, there is no express automatic right of 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. Leave to appeal will normally be granted where prima facie it appears that there are grounds which merit serious judicial consideration. We think this is a good practice that ought to be retained in order to promote finality and expedition in the determination of probate and administration disputes.”

19. Further, in the case Hafswa Omar Abdalla Taib (supra) it was held that:

“What runs through all these decisions is that whereas this Court has jurisdiction to entertain appeals in Succession Causes from the High Court in its original jurisdiction that right is not automatic. Where there is no automatic right of appeal, it behoves the aggrieved party wishing to appeal to seek and obtain leave to do so from the High Court and the granting of leave is a discretionary power.”

### **Disposition**

20. Thus, this court is called upon to exercise its discretionary power to allow the applicant file a second appeal so as to expedite the determination of the dispute. The court's have taken the approach that where a serious point of law arises, that gives added justification for granting a party leave to file a second appeal.
21. In the present case however, the applicant has not argued that there is a point of law which the Court of Appeal is best placed to determine. The issues she raised in the trial court concerned her survivorship capacity as a sister-in- law, and on whether she was a dependent to the deceased. These are the same issues dealt with in the High Court judgment.
22. Accordingly, I find that there is no basis in the present case for the applicant to be granted leave for a second appeal.
23. Ultimately, the application is dismissed with no orders as to costs.

**DATED AT KERUGOYA THIS 3<sup>RD</sup> DAY OF OCTOBER, 2024**

---

**R. MWONGO**

**JUDGE**

Delivered in the presence of:

Magee - Respondent

Kahiga G. for Appellant/ Applicant

Court Assistant - Murage

