



REPUBLIC OF KENYA



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

**In re Estate of Shadrack Kipkoech Bonjo (Deceased) (Probate & Administration
E015 of 2021) [2024] KEHC 14376 (KLR) (19 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14376 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KAPSABET

PROBATE & ADMINISTRATION E015 OF 2021

JR KARANJA, J

NOVEMBER 19, 2024

IN THE MATTER OF THE ESTATE OF SHADRACK KIPKOECH BONJO:::DECEASED

RULING

1. The application dated 20th August 2024 is made by Sammy Kipkosgei Rotich (Objector) against Truphena Jeruto Bonjo (Petitioner) for the basic orders that leave be granted to the Applicant to file an appeal against the ruling delivered by this court on 17th July 2024 and that pending the hearing and determination of the intended appeal the status quo be maintained on both the land and registers respecting the parcels of land described as LR Nos. Nandi/Ndulele/675, 1242, 881, 392, 1452, 1453, 1603, 1604, 1605, 1606 and 1607.
2. The grounds on which the application is founded are set out in the summons dated 20th August 2024 and buttressed by the Applicant's averments contained in the supporting affidavit dated 20th August 2024.

The Petitioner/ Respondent opposes the application on the basis of the averments contained in the replying affidavit dated 18th September 2024.

Both parties filed written submissions in support of or in opposition to the application.

3. After due consideration of the application and the rival submissions, it became apparent to this court that with regard to the prayer for leave, the question is whether the Applicant is entitled to leave to file an appeal against the ruling of this court at the Court of Appeal.

In that regard, it is clear that the [Law of Succession Act](#) does not provide for appeals from the High Court to the Court of Appeal where the High Court exercises its original jurisdiction. Being a special Act of Parliament, the Succession Act ought to be strictly construed and applied as was held in the case of Julius Kamau Kithaka Vs. Waruguru Kithaka Nyaga [2013] eKLR, where it was stated as follows: -

“it is trite law that where any proceedings are governed by a special Act of Parliament like in this case, the [law of succession Act](#) must be strictly construed and applied. Therefore, what is in the [law of succession Act](#) is what was intended to be therein in the manner and extend it is



there. What is not therein expressly is what was intended not to be there by the legislature. I find that the applicant in this case was not required to seek leave to appeal from the High Court.”

4. The finality of proceedings in succession matters from the Magistrate’s court to the High Court on appeal is provided under Section 50 of the *Law of Succession Act* in the following terms: -

“(i) 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 shall be final.

(ii) An appeal shall lie to the High Court in respect of any order or decree made by a Khadi’s’ Court in respect of the Estate of a deceased Muslim and with the prior leave thereof in respect of any part of Muslim Law, to the Court of Appeal.”

5. The observations foregoing clearly indicate that this application turns towards dismissal for being misconceived and incompetent as the impugned ruling of this court to dismiss the Applicant’s application dated 23rd May 2024 may be treated as the final decision in this Succession Cause.

In the application, the Applicant had sought to have the proceedings and/or file in this cause re-opened so as to allow the hearing of his application for revocation of grant dated 13th May 2024.

6. In dismissing the application, this court noted as follows: -

“Given that in this case, the grant was regularly issued and confirmed pursuant to the necessary provisions of the *Law of Succession Act*; and that the entire estate was divided and duly distributed to the proper beneficiaries thereby becoming spent and no longer in existence in its original form, it would not serve the interest of justice to re-open the matter as doing so would not only embarrass the Petitioner but also highly prejudice her and all the other beneficiaries regard being given to the delay by the Applicant in bringing this application at this point in time.”

7. In the case of Hafswa Omar Abdallah Taib & Others Vs. Swaleh Abdalla Taib [2015] eKLR, the Court of Appeal stated as follows:-

“In this case, the Appellate jurisdiction in respect of succession cases has been donated by Section 50[1] of the Laws of Succession Act. From this provision it is clear that decisions from the magistrate’s court in Succession Causes are appealable to the High Court; whose decision on such an appeal is final. However, the decision of the Kadhi’s Court are appealable to the High Court and a party dissatisfied with the decision of the High Court on appeal can appeal further in this court (Court of Appeal) but only with leave of the High Court and in respect only on points of Muslim Law. However, there is no mention of an appeal to this court from the decision of the High Court made in exercise of its original jurisdiction. Indeed, even Section 47 of the same Act makes no mention of an appeal to the Court of Appeal from the decision of the High Court made in the exercise of its original jurisdiction.”



8. Article 164 of *the Constitution* was invoked by the Applicant in support of the application. The provision under Sub Section [3] provides that: -

“The Court of Appeal has jurisdiction to hear appeals from –

- (a) The High Court, and
- (b) any other Court or Tribunals as prescribed by an Act of Parliament.”

Seemingly this provision would provide an alternative window for making an application such as the present one but that is just a mirage as was observed by the Court of Appeal in the Hafswa Omar Abdalla Taib Case [supra] where it stated that: -

“We are not however oblivious to the fact that currently, Article 164[3] of *the Constitution* of Kenya confers directly jurisdiction in the Court of Appeal to hear appeals from the High Court and from any court or tribunal if such and appeal is prescribed by an Act of Parliament. This court in the case of Equity Bank Limited Vs. West Link MBO Limited [App. No. 78/2011] considered the purport of the said Article and concluded and rightly so in our view that it did not confer unlimited right of appeal to this court which could not be restricted by statute. To hold otherwise could certainly have far - reaching consequences that may affect the administration of justice generally and the functions of this court.”

9. In their submissions, both parties herein cited the decision of the Court of Appeal in the case of Rhoda Wairimu Karanja & Another Vs. Mary Wangui Karanja & Anotehr [2014] eKLR, in which it was held in conclusion that: -

“We think we have said enough to demonstrate that under the *Law of Succession Act*, there is not 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 to 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.”

10. From all the foregoing, it is this court’s finding that leave does not lie for an appeal from this court to the Court of Appeal on a Succession Matter and if it does, pursuant to Article 164[3] of *the Constitution* and Section 47 of the *Law of Succession Act*, then an Applicant must demonstrate a prima facie case for grant of leave.

The grounds set out in the memorandum of appeal annexed to the Applicant’s supporting affidavit do not in the opinion of this court meet the threshold for the grant of leave as they do not disclose a prima facie case.

In sum, the main prayer for leave is disallowed and/or declined with the resultant effect that the prayer for maintenance of “*status quo*” pending hearing and determination of the appeal is untenable.

It is therefore ordered that: -

- (1) The application vide the summons dated 20th August 2024 be and is hereby dismissed.
- (2) The Respondent/Petitioner shall have the costs of the Application.



DELIVERED AND DATED THIS 19TH DAY OF NOVEMBER 2024

J. R. KARANJAH,

JUDGE

