



REPUBLIC OF KENYA



**KENYA LAW**

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**In re Estate of Daniel Njogu Macharia (Deceased) (Succession Cause  
7 of 2017) [2025] KEHC 13703 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13703 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
SUCCESSION CAUSE 7 OF 2017**

**EN MAINA, J**

**SEPTEMBER 25, 2025**

**IN THE MATTER OF THE ESTATE OF DANIEL NJOGU MACHARIA (DECEASED)**

**BETWEEN**

**PAULINE WANJIKU NJOGU ..... APPLICANT**

**AND**

**JOEL KABIU NJOGU ..... RESPONDENT**

**RULING**

1. Before this court is a summons dated 28/02/2025 seeking the following orders that;
  - a. Spent
  - b. This Honourable Court be pleased to grant the Applicants herein, leave to Appeal against the whole Judgment of Honourable Lady Justice M.W. Muigai, delivered on 17th, February, 2025.
  - c. This Honourable Court be pleased to grant stay of execution of the orders arising from the Judgment dated 17th February, 2025 until an Appeal to be filed is heard and determined.
  - d. The costs of this Summons be costs in the Cause. 5. Any other or further orders that the Court may deem necessary for course of justice to be served.
2. The said Summons are supported are supported by an affidavit sworn by the Applicant who deposes that she is aggrieved by the judgment as it was not based on the evidence presented before the court by her witness and herself. That the same was based on grounds of prejudice that the judge likely harbours or beliefs extraneous to the case presented to her.
3. The Respondent opposed the application vide a replying affidavit sworn on 18<sup>th</sup> March 2025 wherein the court was urged to dismiss the summons on the basis that there is no judgment in this matter; that the ruling delivered on 17<sup>th</sup> February 2025 was a negative order which revoked the grant issued



on 18<sup>th</sup> April 2012 and confirmed on 29<sup>th</sup> January 2013; that it did not compel the parties to do anything or restrain them from doing anything hence it is incapable of being stayed and issuing the order sought would amount to reinstatement of the grant hence this court would have sat on its own appeal. Additionally, that there is no provision for leave to appeal hence the application is not anchored on the law and that as no appeal has been filed there is no basis for granting an order of stay pending appeal.

4. The Summons were canvassed by way of written submissions.
5. Learned counsel for the Applicant referred to Section 50 of the *Law of Succession Act* and submitted that this court did not, in the first instance have jurisdiction to hear the matter as the value of the estate in question fell within the jurisdiction of the Chief Magistrates' Court. Counsel however conceded that the court issued a negative order but contended that there was an order for redistribution of the estate, an order which was capable of being stayed.
6. On the other hand, Counsel for the Respondent submitted that Section 50 of the *Law of Succession Act* relates to appeals from decisions of the Magistrates courts to the High Court wherein the High Court decision is final; that as at the time this cause was commenced the magistrates court did not have jurisdiction and the value of the land in question was not substantiated and was not pleaded. Further, that the Applicant, has filed this application admittedly without having read or had sight of the ruling and as such the application is speculative and an abuse of the court process.

#### **Analysis and determination.**

7. This court has carefully considered the application, the rival submissions of counsel and the law. The *Law of Succession Act* does not provide for appeals from the High Court to the Court of Appeal as it expressly does, in Section 50, for those of the magistrates and Kadhis courts to the High Court. Section 50 states;
  - “(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.
  - (2) An appeal shall lie to the High Court in respect of any order or decree made by a Kadhi's Court in respect of the estate of a deceased Muslim and, with the prior leave thereof in respect of any point of Muslim law, to the Court of Appeal.”
8. It is nevertheless trite that decisions of the High Court may be appealed to the Court of Appeal with leave. In this case other than revoking the grant the court did make a declaration that the Applicant herein was not a wife of the deceased and she and her children are therefore not beneficiaries of his estate. In my view, it would be remiss of this court not to grant her leave as it would amount to throwing her from the seat of justice. It would also curtail her right of access to justice. She has already filed a Notice of Appeal and the leave sought is, if necessary, therefore granted.
9. The issue of jurisdiction of the high court to hear the application which culminated in the impugned ruling, was never raised before the judge whose order it is sought to be reviewed. Matters of jurisdiction ought to be raised at the earliest opportunity so as to avoid abuse of the court process. In this case, the Applicant waited for the judgment to be delivered which is late in the day. Moreover, she has only raised the issue in the submissions which clearly means it is an afterthought. It is also instructive that the fact that the cause could have been heard in the lower court does not imply that this court was devoid of jurisdiction to hear it as the High Court is after all seized of unlimited jurisdiction in civil



matters. Further, the magistrates court would not have had jurisdiction to revoke a grant which had been obtained in the High Court.

10. On the issue of stay of execution, I would decline to grant the same preferring instead that the same be sought in the court of Appeal once an appeal is preferred.
11. The upshot is the application succeeds only partially. The costs of the application shall be borne by the Applicant.

Orders accordingly.

**RULING SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 25<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**E. N. MAINA**

**JUDGE**

In Presence of:

Mr. Kituku, Advocate for the Respondent.

Miss Mary Muigai, Advocate for the Applicant.

Geoffrey Court Assistant/Interpreter.

