In re Estate of the Late Joseph Cheruiyot arap Koeoch (Deceased) (Succession Cause 123 of 1992) [2025] KEHC 14494 (KLR) (15 October 2025) (Ruling)

Neutral citation: [2025] KEHC 14494 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAKURU

SUCCESSION CAUSE 123 OF 1992

SM MOHOCHI, J

OCTOBER 15, 2025

IN THE MATTER THE ESTATE OF THE LATE JOSEPH CHERUIYOT ARAP KOECH (DECEASED)

BETWEEN

RODAH CHEROTICH KOECH ..... APPLICANT

AND

SAMWEL CHELULE KOECH ..... RESPONDENT

AND

KIPNGETICH KORIR ..... 1ST OBJECTOR

ANE CHEBET ..... 2ND OBJECTOR

RULING

Introduction

1. Before me are two summons for consideration the 1st Application dated 10th March 2025 is an Application for (Being an application for extension of time for giving Notice of Appeal, and for leave to appeal out of time from the Ruling of Honourable Justice S. Mohochi, dated the 8th of August 2024 under Section 47 of the *Law of Succession Act*, Rule 73 of the Law of Succession Rules, Section 7 of the *Appellate Jurisdiction Act*, Order 9 Rule 9 and Order 42 Rule 6 of the Civil Procedure Rules, Article 159 of *the Constitution* of Kenya) seeking the following relief(s);

    i. Spent.

    ii. Spent.

iii. That, this Honourable court be pleased to grant the applicants leave to appeal out of time against the Ruling delivered by the Honourable Justice S.Mohochi, dated the 8th of August 2024 in the High Court at Nakuru, Succession Cause No. 123 of 1992.

iv. That, this Honourable Court be pleased to issue orders of extension of time for giving Notice of Appeal and filing the Record of appeal and service thereof in relation to the Ruling of Honourable Justice S.Mohochi, dated the 8th of August 2024 in High Court at Nakuru Succession Cause No. 123 of 1992.

v. Spent.

vi. That, this Honourable Court be pleased to issue an order for stay of execution of the Ruling entered and delivered herein against the Applicants on 8th of August 2024, pending the hearing and determination of the intended appeal.

vii. That, costs of this application be provided for.

2. The Application is based on the following grounds and on further grounds provided in the annexed affidavit of Nelson Kipngetich Korir in support of the application:

i. That, the High Court of Kenya at Nakuru issued a Ruling Dated 8th August 2024 allowing the Petitioners/Respondents' application to the court dated 13th May, 2024.

ii. That, the Applicants are aggrieved by the Ruling of the Court; they intend to appeal the same and have it set aside.

iii. That, at the delivery of the Ruling, the court issued preservatory orders against Nelson K korir and Alice J Chebet (the intended appellants) and their agents or assigns with regard to parcel no LR 5438/2 situated at Londiani and the rest of the estate of the deceased.

iv. That, the Court also issued an order allowing summons for confirmation of grant dated 28th May 2024 subject to the filing of a comprehensive mode of distribution.

v. That, the court ordered that the administrators (the respondents) herein file a detailed mode of distribution of the estate.

3. That, the Honourable Court is allowed to extend time on such terms as it deems just upon a party seeking such extension establishing the basis upon which the court should exercise its discretion in his/her favour. That, Section 7 of the *Appellate Jurisdiction Act* (Cap 9) of the Laws of Kenya provides as follows:

> "The High Court may extend the time for giving notice of intention to appeal from a judgment of the High Court or for making an application for leave to appeal or for a certificate that the case is fit for appeal, notwithstanding that the time for giving such notice or making such appeal may have already expired."

4. That, due to a regrettable and inadvertent error, the Applicants failed to lodge a Notice of Appeal and Record of Appeal within the prescribed period of 14 and 60 days respectively.

5. That, reasons for the delay in filing the Notice of Appeal are inadvertent and are excusable for reasons that:

a. At the time of the delivery of the ruling the Applicants did not have notice.

b. Counsel on record for the Applicants failed to inform them that a ruling had been delivered and the orders therein.

c. The relationship between the Applicants and their counsel on record had soured to the extent that they were not aware of the court dates and other proceedings.

d. The Applicants only learnt of the ruling when the petitioners informed them that they had confirmed grant and they were going to evict them from the parcel of land they occupy.

e. By the time the Applicants learnt of the Ruling in March 2025, time to appeal had already lapsed.

f. After learning of the Ruling, the Applicants instructed new counsel who had to seek the ruling and the proceedings of the honourable court and acquaint themselves with the contents and verdict therein.

g. That the Applicants had to consult with their Counsel on record on their next move which resulted in this application to appeal out of time.

6. That, the time between the date of ruling and this application is not too long and it is reasonable within the law and that the Applicants have brought this Application at the earliest opportunity.

7. That, the respondents, in a bid to enforce the aforementioned Ruling, are threatening to evict the 2nd Applicant and her dependants from Londiani/Chebewor Block 3/210.

8. That, the Applicants and their dependants will be rendered homeless despite having spent their entire lives there and making developments.

9. That, the Respondents equally want to bar the Applicants from accessing LR 5438/2 where they gave been grazing their cows which is their source of livelihood.

10. That, the Applicants' intended appeal herein will be rendered nugatory unless the Application is urgently heard and orders sought in the Notice of Motion granted.

11. That, any further delay in hearing and determination of this application will be highly prejudicial to the Intended Appellants.

12. That, this application has been brought without unreasonable delay.

13. That, the Applicants' intended appeal is merited and raises arguable grounds. It is not frivolous, vexatious or scandalous and neither is it an abuse of the Court process.

14. That, the intended appeal raises serious arguable grounds as can be discerned from the draft Memorandum of Appeal annexed to the supporting affidavit.

15. That, the applicants are willing to deposit any amount that this Honourable Court shall direct as security for costs though the title deeds are in the name of the deceased.

16. That, the Respondent will not suffer any prejudice if the time for serving the Notice of Appeal is extended.

17. That, there is need to protect the Intended Appellants' opportunity to fully agitate their dispute owing to the fact that the intended appeal has huge chances of success and not a mere frivolity.

18. That, it is in the interest of justice for this Honorable Court to extend the time for serving the Notice of Appeal and to grant the Applicant leave to file such Notice of Appeal and Record of Appeal out of time.

19. The Second Application is a summons for revocation of grant dated 10th April 2025 filed by thirteen Applicants who describe themselves as the children of the 2nd and 3rd houses of the deceased brought pursuant to Section 76 of the *Law of Succession Act*, Chapter 160, Laws of Kenya and Rule 44 & 73 of the Probate and Administration Rules and all other enabling provisions of the law seeking the following relief(s);

    i. Spent

    ii. Spent

    iii. That, this Honorable Court be pleased to revoke the Grant issued on 29th October 2024 to Roda Cherotich Koech and Samuel Chelule Koech in limine based on the procedural impropriety on the face of the record and property of the deceased be reinstated to the status quo ante the filling of the succession cause to wit to revert to the position they were before the succession cause was filed.

    iv. That, the costs of this application be in the cause.

20. The Application is supported by the annexed affidavit of Dorothy Chepkoech Koech and is based on the following grounds:

    i. The administrators/Respondents filed a petition in court for grant of representation of the estate of the deceased. Some beneficiaries and dependants of the estate (from the 2nd and 3rd family) were omitted from that Petition dated 17th June 1992.

    ii. This Honorable Court delivered a ruling on the 8th August 2024 in which it confirmed the grant of probate to the Petitioners, following Summons for confirmation of grant dated 28th May 2024.

    iii. The proceedings to obtain the Grant were defective and incompetent in substance and the ultimate grant is therefore void and should be declared as such by this Honorable Court.

    iv. The Grant was obtained by means of untrue allegations of facts essential in point of law to justify the grant on account of failure to include part of the beneficiaries in the Petitioner's mode of distribution.

    v. The Petitioners/Respondents did not consult the objectors/applicants and the other beneficiaries to consent to the petition as required by law before the Grant was applied for.

    vi. The Petitioners/Respondents additionally have included strangers who have no right nor claim in their schedule of distribution while leaving out deserving beneficiaries with legitimate claim.

    vii. That the Honorable Court ought to have disallowed the said Petition to accord all beneficiaries a chance to petition for letters of administration in place of confirming a defective petition without taking into account the ramifications of the same.

    viii. There was no agreement and/or consent by the other beneficiaries to make the petitioners the administrators of the estate of the deceased person.

    ix. That the 1st administrator herein has since issue of temporary grant misused his powers as an administrator to intimidate the applicants herein and other beneficiaries whom they represent.

x. That after the death of the late Joseph Cheruiyot Arap Koech (Deceased), the 1st administrator has constantly caused anarchy including using security apparatus to whisk away the objectors and their families and bar them from their homes within the estate of the deceased.

xi. The administrators have deceived this honourable court by denying the Objectors relation to them and to the deceased despite the fact the families have been known to each other for decades occupying and making use of the deceased's estate.

xii. That the administrators herein cannot be trusted by the other beneficiaries to faithfully administer the estate of the deceased and especially there being no administrator from the 2nd house and 3rd house from which the Applicants/objectors come from.

xiii. There is need for issuance of Conservatory orders freezing the benefits and/or restraining and/or prohibiting the administrators, their agents, servants, and/or any other persons acting at their behest howsoever or any of the administrators from making any withdrawals or dealing whatsoever with the benefits accruing from the estate of the deceased pending inter-parties hearing of this application and the Succession Cause, so that the beneficiaries not included in the Petition by the Petitioners are not prejudiced and so as to protect all other beneficiaries of the estate.

xiv. The objectors herein ultimately looks upon this Honourable Court to do that which is just and right and in doing so, revoke the grant issued to the Petitioners as they cannot be entrusted with the administration of the Estate of the late Joseph Cheruivot Arap Koech (Deceased) and for concealing the existence of other beneficiaries of the estate and misrepresenting to the court of facts material to the grant of the letters of administration of the deceased person.

xv. That in any case, the fears of the beneficiaries of the estate have been confirmed since the Petitioners have immediately began to threaten eviction of the applicants and other beneficiaries from the estate of the deceased which they have lived on their whole lives.

xvi. That the said actions are contrary to the duties bestowed on the Petitioner as an administrator contrary to Section 76 (d) (ii) of the *Law of Succession Act* and the said grant ought to be revoked immediately.

21. The 1st and 2nd Applications are opposed and the Court had directed that the same be heard and disposed off by way of filed written submissions.

22. Both groups of Applicants are represented by GKL Advocates LLP.

Applicants Submissions

23. With regard to the 2nd Application as to whether the application for leave to lodge an appeal out of time and for extension of time is merited the Applicants contend that this Court has wide unfettered discretion in granting leave to file an appeal out of time.

24. That, Article 159 (2) (d) of *the Constitution* of Kenya 2010 provides that Courts shall determine cases without undue regard to technicalities.

25. That, further, Section 7 of the *Appellate Jurisdiction Act* provides that:

> "The High Court may extend the time for giving notice of intention to appeal from a judgment of the High Court or for making an application for leave to appeal or for a

certificate that the case is fit for appeal notwithstanding that the time for giving such notice or making such appeal may have already expired."

26. That, the Court in the case of Karny Zaharya & Another vs. Shalom (2018) eKLR, laid down the conditions that must be met by an applicant to be granted orders of extension as follows:

> "Some of the considerations to be borne in mind while dealing with an application for extension of time include the length of the delay involved, the reason(s) for the delay, the possible prejudice, if any, that each party stands to suffer depending on how the court exercises its discretion; the conduct of the parties; the need to balance the interests of a party who has a decision in his or her favour against the interest of a party who has a constitutionally underpinned right of appeal; the need to protect a party's opportunity to fully agitate its dispute, against the need to ensure timely resolution of disputes; the public interest issues implicated in the appeal or intended appeal; and whether, prima facie, the intended appeal has chances of success or is a mere frivolity. In taking into account the last consideration, it must be born in mind that it is not the role of a single judge to determine definitively the merits of the intended appeal. That is for the full Court if and when it is ultimately presented with the appeal."

27. The Applicants submit that, the circumstances which have led to the late lodging of the Applicants' notice of intention to appeal were beyond their control and are therefore excusable.

28. That, this is because, at the time of delivery of the ruling the Applicants did not have notice as their Advocate on record had failed to inform them that a ruling had been delivered in the matter and the orders thereon.

29. That, they only learnt of the ruling in March 2025 when the Respondents informed them that they had a confirmed grant and they were going to evict them. By then, the time to lodge an appeal had already lapsed.

30. That, while the 2nd Applicant/Intended Appellant was in court on this date, she is a fairly old illiterate woman who made her plea to the court as her former counsel had long stopped appearing in her representation. The court gave her another date after her attempt to plead her case. She therefore had no notice that the matter had been concluded as she thought the court had given another date in consideration of her case.

31. That, they therefore instructed new counsel who immediately came on record and filed this instant application for leave to appeal out of time.

32. That, in the case of First American Bank of Kenya Ltd vs Gulab P. Shah & 2 others, the court set out the factors to be considered in deciding whether or not to grant an such application as follows:

    i. "The explanation if any for the delay;

    ii. The merits of the contemplated action whether the matter is an arguable one deserving a day in court or whether it is a frivolous one which would only result in the delay of the court of justice.

    iii. Whether or not the Respondent can adequately be compensated in costs for any prejudice that he may suffer as a result of a favourable exercise in favour of the Applicant."

33. That, the Applicants' intended appeal is merited and it raises arguable grounds. It is not frivolous, vexatious or scandalous and neither is it an abuse of the Court process.

34. That, this is because the preservatory orders were issued against the Applicants without the Court considering that they and their dependants have been living on and utilizing the land even before the death of the deceased.

35. That, it is therefore not in the interest of justice that they are disinherited and evicted from the said property and are rendered homeless despite having spent their entire lives and utilised the same.

36. That, the Applicants should be given a day in Court to fully ventilate this critical matter as no prejudice will be occasioned to the Respondents.

37. That, the right of appeal is a constitutionally guaranteed right as it was held in the case of Richard Nchapi Leiyagu vs IEBC & 2 Others where the Court stated that:

> " The right to a hearing not only constitutionally entrenched but it is also the corner stone of the rule of law;
>
> i. The right to be heard is a valued right; and
>
> ii. The right of a party to be heard before adverse action is taken against such a party is so basic that a decision which is arrived at in violation of it will be nullified, even if the same decision would have been reached had the party been heard, because, the violation is considered to be a breach of natural justice."

38. That, from the foregoing, it is in the interest of justice that the Applicants are allowed to lodge their appeal out of time.

39. The Applicants contends that as to whether this Court should issue an order of stay of execution of the Ruling dated the 8th of August 2024, that, Order 42 Rule 6(2) of the Civil Procedure Rules provides that in order for the Court to allow an application for stay of execution pending appeal, the Court must satisfy itself that:

(a) "Substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and

(b) Such security as the court orders for the due performance of such decree may ultimately be binding on him has been given by the applicant."

40. That, despite the unfortunate delay, the Applicants instructed new counsel and brought this application as soon as they became aware of the Ruling in question herein.

41. That, in the case of James Wangalwa & another vs Agnes Naliaka Cheseto Bungoma HC Misc Application No. 42 of 2011, the Court held that:

> " The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the Applicant as the successful party in the appeal. This is what substantial loss would entail...The issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving status quo because such loss would render the appeal nugatory."

42. It is the Applicants submission that they stand to suffer substantial loss unless the orders sought are granted. This is because the Court in issuing preservatory orders allowed that the Applicants are evicted and denied use of the properties within the estate.

43. The Applicants also, having not participated in the succession proceedings procedurally from the onset are denied the chance in the confirmation of grant to bring their claim to its conclusion as espoused in Section 76 of the *Law of Succession Act*. This in essence disinherits the Applicants and the same ought to be exhaustively decided by an Appellate Court.

44. That, further, in the case of Kenya Shell Limited v Benjamin Karuga Kibiru & another [1986] eKLR, Hancox JA observed that:

> " ....It is true to say that in consideration [sic] an application for stay, the court doing so must address its collective mind to the question of whether to refuse it, would render the appeal nugatory....."

45. That, Applicants have it on good authority that the Respondents have started making efforts toward the distribution of the estate of the deceased Joseph Cheruiyot Arap Koech. Considering the subject matter in the ruling and in the intended appeal is essentially the estate. Its distribution will render the intended appeal nugatory if stay is not granted.

46. That, the Applicants have deponed in their supporting affidavit that they are ready and willing to deposit security in Court as soon as ordered by this Honourable Court.

47. Reference is made to the case of Focin Motorcycle Co. Limited vs Ann Wambui Wangui & another [2018] eKLR where the Court stated that:

> " Where the applicant purposes to provide security as the Applicant has done, it is a mark of good faith that the application for stay is not just meant to deny the Respondent the fruits of judgment. My view is that it is sufficient for the applicant to state that he is ready to provide security or to propose the kind of security but it is the discretion of the Court to determine the security....."

48. That, it is therefore our humble prayer that this Court be persuaded to order a stay of the execution of the impugned Ruling.

49. That, based on the foregoing submissions, evidence and law, we believe that the Applicants have demonstrated that their application is merited and it should therefore be allowed as prayed with costs to the Applicants.

50. With regards to the 2nd Application the Applicants argue their Application is not res judicata that, the High Court in Re Estate of Nchogu Sagana (Deceased) [2021] eKLR held as follows:

> " A party seeking to rely on the doctrine of res judicata to bar a suit from being heard must prove each of the following elements:
>
> i. The suit or issue was directly or substantially in issue in the former suit;
>
> ii. The former suit was between the same parties or between the same parties under whom they or any of them claim;
>
> iii. The parties were litigating under the same title in the former suit; and
>
> iv. The Court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.

51. That, it is the Applicants submission that the ruling dated 8th August 2024 was in regards to several applications including an application for substitution that had been filed by Nelson Kipngetich Korir and Alice Jane Chebet who sought for leave to substitute Samuel Chelule Koech.

52. That, whereas this instant application relates to revocation of the grant issued on 29th October 2024, none of the applications determined by the said ruling was on revocation of the grant. The subject matter directly in issue and that is being challenged by the Objectors/Applicants is the confirmed grant as awarded to the petitioners despite fraud and concealment of material facts that they have laid down in Court.

53. That, the Objectors/Applicants herein were not parties in the matter and did not participate in its proceedings. This as an important element of res-judicata therefore remains unmet.

54. That, It is therefore our humble submission that these proceedings are not res judicata as they have never been filed before this Court or any other Court of competent jurisdiction.

55. That, Section 76 of the *Law of Succession Act* provides that a grant of representation, whether or not confirmed, may at any time be revoked or annulled if the Court decides either on application by any interested party or of its own motion.

56. That, the Court in the case of Mercy Njoki Irungu vs Lucy Wamuyu Maruru [2016] eKLR defined an interested party as follows:

> "Interested person or person interested in the estate includes but is not limited to the incumbent fiduciary; an heir, devisee, child, spouse, creditor and beneficiary and any other person that has a proprietary right in or claim against a trust estate or the estate of a deceased, ward or protected individual or a person that has priority for appointment as personal representative and a fiduciary representing an interested person..."

57. That, this means that the application for revocation of grant can be done by either a beneficiary of the estate or by an interested party.

58. That, the Applicants therefore have locus standi to prosecute this application as they are children of the deceased from his 2nd and 3rd wives. As is exhibited by their birth certificates, birth notifications, hospital cards and identity cards as annexed in the supporting affidavit of Dorothy Chepkoech Koech dated 11th April 2025.

59. That, the Applicants have further provided the Court with various sworn affidavits in their Supplementary Affidavit dated 10th June, 2025 by persons key to the community around the deceased including family members and elders, affidavits which the Applicants insist corroborate the above-mentioned documents.

60. Whether these proceedings offend the doctrine of latches.

61. That, a reading of the court's wisdom in Re Josephine Magdalene (Deceased) [2016] eKLR informs us that:

> "My reading of this is that an application founded in Section 76 of the *Law of Succession Act* can be made at any time. There is no limitation set to the provision for the making of the application. The provision is open ended".

62. That, in bringing their claim, the objectors have cited active concealment of issue by the Petitioners. They in their affidavits brought evidence that there was attempts on their end to solve matters locally.

They also have expressed clearly for the benefit of this Court that the proceedings were concealed from them and they maintained an unclear picture until the year 2024.

63. That, further, this application challenges a cause of action that arose on 29th October 2024.

64. That, therefore the 6 months the Objectors took to file this application cannot amount to inordinate or unreasonable delay.

65. That, these proceedings do not offend the doctrine of latches.

66. That, Section 76 of the *Law of Succession Act* provides that a grant of representation, whether or not confirmed, may at any time be revoked or annulled if the Court decides either on application by any interested party or of its own motion-

    a. That the proceedings to obtain the grant were defective in substance;

    b. That the grant was obtained fraudulently by the making of a false statement or by the concealment from the Court of something material to the case;

    c. That the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;

    d. That the person to whom the grant was made has failed, after due notice and without reasonable cause either -

        i. To apply for confirmation within a year or such longer period as the court

        ii. order or allow; or

        iii. To proceed diligently with the administration of the estate; or

        iv. To produce to the court an inventory or account of administration as required by law;

67. That the grant has become useless and inoperative through subsequent circumstances. The Applicants rely on the case of In Re Estate of Prisca Ong'ayo Nande (Deceased) [2020] KEHC 6553 (KLR) expounded on the above section as follows:

> " A grant of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant of letters of administration intestate was made instead of a grant of probate or vice versa. It could be that the process was marred by fraud and misrepresentation or concealment of matter such as where some survivors are not disclosed or the applicant lies that he is a survivor when he is not among other reasons. The second general ground is where the grant was obtained procedurally but the administrator thereafter got into problems with the exercise of administration such as where he fails to apply for confirmation of grant within the time allowed, or he fails to apply for confirmation of grant within the time allowed or he fails to apply for confirmation of grant within the time allowed or he fails to render accounts as and when required..."

68. Reference is made to the matter of Re Estate of Ngaii Gatumbi alias James Ngaii Gatumbii (H. C. Succession Case No. 783 of 1993) the Court held that:

> "A grant will be revoked where a person who is entitled to apply is not notified by the petitioner of his intention to apply and that person's consent to the petitioner's application is not sought. As such the grant to this extent ought to fail as it was defective in substance."

69. That, the Applicants herein are the children of the 2nd and 3rd wives of the deceased. Despite this, they were not involved in the proceedings, they were never made aware of the Respondent's intention to petition for the grant of letters of administration and they also did not consent in signing to the grant in question.

70. That, it is trite that failure to get the consent of all persons of equal or lesser priority to the Respondents made the grant defective in substance.

71. That, as such, the grant must be revoked to give the Objectors a chance to be part of the proceedings.

72. That, there was material non-disclosure and concealment of material facts when the members of the first family misrepresented themselves as being the only children of the deceased.

73. That, this is despite them being fully aware that the Deceased had 3 wives and children from each of the wives as they have exhibited by a chief's letter dated 12th April 2024 as well as multitude of Affidavits filed as annexures to the Applicants supporting affidavit purporting to vouch for the Applicants and their mothers being dependants of the deceased.

74. That, the law grants administrators considerable discretion in the exercise of distribution and management of estates, provided that they act fairly and in good faith.

75. That, the Respondents outside of irregularly obtaining grant have allocated strangers who have no claim over the estate of the deceased.

76. That, this action by the Respondents is unfair and illegal as the Applicants are in danger of being evicted from Londiani/Joubert/ Kedowa Block 3 (Chedowor) 210 where they have been residing for decades.

77. That, further they sold portions of Kericho/ Londiani/Joubert/ Kedowa Block 8 Kahurura/14 way before grant was confirmed same which is an action in intermeddling.

78. It is therefore in the interest of justice that the grant issued to the Petitioners is revoked to prevent further maladministration of the deceased's estate.

79. That, it is trite that costs are at the discretion of the Court, submitting that the costs of this application be borne by the Respondents.

Respondents Submissions

80. The Respondents opposed the 1st and 2nd Applications by filingtheir Grounds of Opposition and Replying Affidavit sworn by Samwel Chelule Koech on 8th April 2025 for the 1st Application, contending that:

    a. the Applicants lack locus standi;

    b. the 214-day delay is inordinate and inexcusable;

    c. the intended appeal is frivolous and seeks to relitigate res judicata matters;

d. granting the application would prejudice the Respondents and lawful beneficiaries; and

e. the application constitutes an abuse of court process.

81. That, notably, the Applicants' claim of ignorance is refuted, as Alice Jane Chebet was present at the Court mention on 29th October 2024, where the lack of locus standi was reiterated.

82. That, the Respondents urge this Honourable Court to dismiss the application with costs, as it is founded on misrepresentations, seeks to relitigate settled matters, and prejudices the lawful beneficiaries of an estate that has remained unresolved for over 32 years. The High Court's broad discretion under Section 47 of the *Law of Succession Act*, as affirmed in Hafswa Omar Abdalla Taib & 2 Others v Swaleh Abdalla Taib [2015] KECA 871 (KLR), empowers this Court to dismiss applications lacking legal or evidentiary basis.

83. That, the estate of the late Joseph Cheruiyot Arap Koech, who passed away on 16th May 1992, comprises significant assets, including L.R. No. 5438/2 (Londiani, 297 acres), shares, vehicles, livestock, and bank accounts. Initiated in 1992, this succession cause has been delayed for over three decades due to repeated disruptions, including actions by the Applicants.

84. That, on 8th August 2024, this Honourable Court exercised its discretion under Section 47 of *Law of Succession Act* to dismiss the Applicants' summons for substitution (dated 15th April 2024) and injunctive relief (dated 25th April 2024). The Court found that the Applicants lacked locus standi under Section 29, as they failed to substantiate their claims as a son or widow of the deceased. Their reliance on an uncorroborated letter from an Assistant County Commissioner, prepared 32 years after the deceased's passing, was deemed insufficient.

85. The Court further classified the Applicants' occupation of L.R. No. 5438/2 since March 2024 as "criminal intermeddling" under Section 45.

86. That, in the same Ruling, the Court granted the Respondents' application dated 13th May 2024, issuing preservatory orders to restrain the Applicants from further intermeddling. Additionally, the Court conditionally allowed the Respondents' summons for confirmation of grant dated 28th May 2024, pending a comprehensive mode of distribution.

87. That, the Applicants' Current Motion was filed on 10th March 2025, 214 days (approximately seven months) after the Ruling, the Applicants attribute their delay to their former counsel's failure to notify them and a "soured relationship," claiming they only learned of the Ruling in March 2025. They seek leave to appeal out of time, an extension of time, and a stay of execution.

88. That, the Respondents, through their Grounds of Opposition and Replying Affidavit (sworn by Samwel Chelule Koech on 8th April 2025), contend that:

a. the Applicants lack locus standi;

b. the 214-day delay is inordinate and inexcusable;

c. the intended appeal is frivolous and seeks to relitigate res judicata matters;

d. granting the application would prejudice the Respondents and lawful beneficiaries; and

e. the application constitutes an abuse of court process.

89. That, the Applicants' claim of ignorance is refuted, as Alice Jane Chebet was present at the Court mention on 29th October 2024, where the lack of locus standi was reiterated.

90. The Applicants' submits with regards to the 1st refined issue that application is fundamentally flawed due to their lack of locus standi, as established in the Ruling. Section 29 of the *Law of Succession Act* requires proof of dependency or beneficiary status, which the Applicants failed to provide. Their reliance on an uncorroborated letter was dismissed, with reference to Re Estate of Alfred Mutune Munyao (Deceased) [2019] eKLR. The High Court's discretion under Section 47, as upheld in Hafswa (supra), supports rejecting claims by unauthorized parties. As the Applicants have not substantiated their status as dependents/beneficiaries, they are barred from seeking appellate relief.

91. That, the discretion to grant an extension of time to appeal is an equitable remedy, not an automatic right, as outlined in Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others [2014] eKLR. The Supreme Court established six guiding principles:

    a. length of delay;

    b. reason for delay;

    c. arguability of the appeal;

    d. prejudice to the Respondent;

    e. conduct of the parties; and

    f. interests of justice.

92. That, the Applicants' 214-day delay (8th August 2024 to 10th March 2025) is inordinate and inadequately explained.

93. That, their claim of ignorance is contradicted by Alice Jane Chebet's presence at the 29th October 2024 Court mention furthermore, their 32-year inaction since 1992 undermines their diligence. In Githau v Kagiri [2024] KEHC 6320 (KLR), a 13-day delay was deemed inexcusable due to insufficient justification. Here, the Applicants' unsubstantiated claim of a "soured relationship" with counsel fails to meet the threshold for relief under Section 47.

94. That, the intended appeal, as outlined in the draft Memorandum of Appeal, is frivolous and seeks to rehash dismissed claims. The Ruling of 8th August 2024 unequivocally held that the Applicants lack locus standi and have no right to seek substitution due to their failure to prove beneficiary status under Section 29.

95. That, the no new evidence has been presented to challenge this finding. In Salat v IEBC (supra), a prima facie case is required for an appeal to be arguable. The Applicants' reliance on a forged birth certificate and unproven marriage claims lacks merit, as affirmed in Hafswa (supra), the High Court's discretion to dismiss unmeritorious claims supports denying leave for this futile appeal.

96. That, granting the Application would significantly prejudice the Respondents by further delaying a succession cause pending for over 32 years. The Ruling classified the Applicants' occupation of L.R. No. 5438/2 as criminal intermeddling under Section 45. In Hafswa (supra), the High Court's discretion to prioritize estate administration over unsubstantiated claims was upheld.

97. Allowing the Applicants' application would frustrate the Respondents' compliance with the Ruling and undermine the expeditious resolution of disputes, as mandated by Article 159(2)(b) of *the Constitution* of Kenya.

98. That, the Applicants' attempt to relitigate settled issues of locus standi constitutes res judicata. The Ruling's findings, reiterated on 29th October 2024, are final. In Hafswa (supra), the High Court's

discretion under Section 47 to dismiss incompetent applications was upheld to prevent re-litigation. The Applicants' appeal is an abuse of process, as it seeks to reopen matters already determined, contrary to the Court's authority under Section 47.

99. The Applicants' request for a stay of execution lacks merit, as they have no legal interest in the estate. Their claim of homelessness is demonstrably false, as L.R. No. 5438/2 has been used solely for agricultural and grazing purposes and has remained uninhabited since the deceased's acquisition. In Hafswa (supra), the High Court denied injunctive relief due to insufficient evidence and potential harm to the estate.

100. That, similarly, in Halai & Another v Thornton & Turpin (1963) Ltd, 1990 KECA 65 (KLR) a stay requires proof of substantial loss, timeliness, and sufficient cause, none of which the Applicants demonstrate. Their intermeddling, in violation of Section 45, does not justify a stay.

101. That, the Applicants' Notice of Motion dated 10th March 2025 is incompetent, meritless, and an abuse of court process. The High Court's discretion under Section 47, as affirmed in Hafswa (supra), empowers it to dismiss applications lacking legal or evidentiary basis, particularly by non-beneficiaries engaging in intermeddling. The Applicants' lack of locus standi, inordinate 214-day delay, frivolous appeal, and attempt to relitigate res judicata matters fail the principles established in Salat v IEBC (supra). Granting the application would prejudice the Respondents and undermine justice under Article 159(2)(b) of *the Constitution* of Kenya.

102. The Respondents pray that this Court be pleased to:

a. Dismiss the Applicants' Notice of Motion dated 10th March 2025 with costs.

b. Declare the application an abuse of court process.

c. Issue any further orders deemed just to ensure expeditious administration of the estate and deter abuse of process.

Analysis and Determination

103. Having considered the pleadings by the Applicants, their written submissions, the opposition by the Respondents and the Respondents written submissions the sole issue is whether there is merit in the Applications dated 10th March 2025 and the one dated10th April 2025 are merited.

104. It is the finding of this Court that both applications fail.

105. The summons for revocation of grant dated 10th April, 2025 is res judicata by dint of attempted re-litigation of legal standing of Bornes Chesang (deceased) and Alice Chebet.

106. The Applicants contend to be children of the two women and the deceased. This Court had pronounced itself on this issue. It now matters not who comes next with similar arguments. In fact the Applicants have all along been alive and never thought it wise for 34 years to seek to prove their claims on this estate. Their three decades of fence sitting is observed with a dim view.

107. In exercise of my discretion and noting that the Appellants lay blame on previous advocates, I am afraid the application dated 10th March 2025 equally lacks merit for the following reasons:

108. Indolence of counsel is a serious offence and amounts to actionable complaint to The Advocates Complaints Tribunal, The Law Society of Kenya etc. No such complaint has been preferred upon the former counsel.

109. The two hundred - and fourteen-day delay remains unaccounted for and no satisfactory reason has been given.

110. I do not wish to consider the merits or de-merits of the appeal owing to the prior reasons.

111. This being a 34-year litigation would prejudice the administrators and other beneficiaries if this application was allowed.

112. I decline to extend time and grant leave to appeal under the circumstances.

113. On the 2nd application dated 10th April, 2025 I find the same to be lacking in merit in that it attempts to re-litigate issues that have been dealt with by this court.

114. However, not being persuaded by the merits of the Applicants Applications, this Court is a Court of equity and mercy and cannot be seen to be shutting the doors of justice to the Applicants. I invoke my inherent jurisdiction to grant a window of appeal owing to the long-protracted dispute.

115. This Court is of the view that the Applicants being grieved by this Court may have an opportunity to test the soundness of this Court's ruling before another impartial forum.

116. I thus find both applications dated 10th April, 2025 and the one 10th March, 2025 to be of no merit and the same are each dismissed with costs to the Respondent.

117. The Appellant has thirty (30) leave to Appeal against All the Ruling(s) of this Court and the period of leave shall act as stay against execution.

118. With regards to the unopposed summons for rectification of grant filed by the Respondent and pending hearing, the Court shall assign a hearing date falling outside the period of stay.

It is So Ordered

DATED, SIGNED AND DELIVERED AT NAKURU ON THIS DAY OF 15TH DAY OF OCTOBER 2025.

S. MOHOCHI

JUDGE