

**IN THE COURT OF**  
**APPEAL AT NAKURU**  
**(CORAM: WARSAME, J.A. IN**  
**CHAMBERS) CIVIL APPLICATION NO.**  
**E070 OF 2025 BETWEEN**

**MARY WANJIKU.....APPLICANT**

**AND**

**SALOME WAMBUI KINGI.....RESPONDENT**

*(An application for leave to appeal against the decision of the High Court  
at Nakuru (S.M. Mohochi, J) delivered on 15th August 2024*

**in**

**Succession Cause No. 80 of 2009)**

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**RULING**

1. Mary Wanjiku has filed the instant application dated 10th July 2025 seeking leave to appeal against the ruling delivered on 15th August 2024 by Hon. Justice S.M. Mohochi. The application is brought under Article 159(2)(d) of the Constitution of Kenya 2010, Section 3A of the Appellate Jurisdiction Act, and Rule 41(b)(ii) of the Court of Appeal Rules, 2022.
2. The genesis of this matter lies in a succession dispute concerning the estate of the late Melchizedek Kingi Gideon

who

died intestate on 13th October 2008. The respondent, Salome Wambui Kingi, petitioned for letters of administration. The applicant filed an objection claiming to be the second widow of the deceased. Following viva voce evidence, the trial court dismissed the applicant's claim as a wife but recognized her child, Priscah Leah Wanjiku, as a beneficiary of the estate.

3. According to the applicant's supporting affidavit, she was unaware of the ruling dated 15th August 2024 until 24th March 2025 when her then advocates called her to sign summons for confirmation of grant. The applicant deposes that she had been sickly and had lost contact with her advocates, Mugambi Nguthari & Co. Advocates.
4. The applicant further states that upon appointing the firm of Raydon Mwangi & Associates Advocates to act for her, she was advised that there is no automatic right of appeal. She then filed an application for leave to appeal at the superior court, which leave was refused on 26th June 2025.
5. The legal framework governing applications for leave to appeal to this court is found in Rule 41(b) of the Court of

Appeal Rules, 2022, which provides:

"41 (b)

*where an appeal lies with the leave of the Court, application for such leave shall be made—*

*(i) in the manner laid down in rules 44 and 45 within fourteen days after the decision against which it is desired to appeal; or*

*(ii) where application for leave to appeal has been made to the superior court and refused, within fourteen days after such refusal.*

6. Further Rule 45 of the Court of Appeal Rules, 2022 prescribes the documents that must accompany applications for leave to appeal. The relevant provisions states:

(3) An application for leave to appeal shall, where practicable, be accompanied—

(a) by a copy of the decision, including the reasons therefor (if any) against which leave to appeal is sought; and

(b) where an application under rule 40 (1) (a) or 41 (1) (a) has been refused, by a copy of the decision, including the reasons therefor (if any), refusing that application

(4) Where the documents referred to in subrule (3) have not been filed together with the application, the applicant shall file and serve the documents at least twenty-four hours before the application is heard.

7. I have carefully examined the documents annexed to this application. The applicant has exhibited the following: Annexure MW-1 containing the ruling of the High Court dated 15th August 2024; Annexure MW-2 containing medical records from Bahati Sub-County Hospital dated 5th May 2025; and Annexure MW-3 is a draft Memorandum of Appeal. What is conspicuously and fatally absent from the annexures is any copy of the ruling, order, or record showing that leave to appeal was sought from and refused by the High Court on 26th June 2025 as alleged by the applicant.
8. Even if, I were to accept that it was not practicable for the applicant to file the High Court's ruling refusing leave with this application, there is no application before the Court seeking leave to file the missing ruling, no explanation for why it has not been produced, and no indication of when, if ever, it will be filed. Further, the applicant has failed to comply with Rule 45(4) which provides that where the required documents have not been filed together with the application, the applicant shall file and serve the documents at least twenty-four hours before the application is heard.

This provision recognizes that there may

be circumstances where immediate production of documents is not practicable, and provides a mechanism for late filing with a clear deadline.

9. The importance of the decision refusing leave cannot be overstated. Without it, this Court faces several insurmountable difficulties.
  - a. The Court cannot verify whether an application for leave was actually made before the High Court;
  - b. The Court cannot know on what grounds leave was sought in the High Court;
  - c. The Court cannot know what reasons, if any, the High Court gave for refusing leave, including whether the application was withdrawn, abandoned, or dismissed for other reasons;
  - d. The Court cannot determine whether the refusal was based on procedural grounds, substantive grounds, or both;
  - e. The Court cannot assess whether there are special circumstances that would warrant this Court taking a different view from the High Court; and
  - f. The Court cannot determine whether the application before the High Court complied with the requirements of Rule 41(1)(a).
10. In my view, the requirement under Rule 45(3)(b) is not a procedural technicality that can be dispensed with in the interests of justice. It is a substantive requirement that ensures

the proper administration of justice and enables this Court to properly discharge its function.

11. I note that the draft Memorandum of Appeal annexed as MW-3 sets out five grounds of appeal. While some of these grounds may appear arguable on their face, I cannot proceed to evaluate their merit without a copy of the ruling refusing leave from the High Court. The High Court's reasons for refusing leave would provide important context for assessing whether this Court should exercise its discretion differently.
12. Rule 45(3) uses mandatory language: the application 'shall' be accompanied by the specified documents 'where practicable.' In the circumstances of this case, it is my view that it was eminently practicable for the applicant to annex the ruling of 26th June 2025. The application before this Court was filed on 10th July 2025, some 14 days after the alleged refusal of leave. This period was more than sufficient to obtain a certified copy of the ruling from the High Court registry. Moreover, even if the document could not be obtained by the filing date, Rule 45(4) afforded the applicant

a further opportunity to comply by filing the missing document at least twenty-four hours before the

hearing. This opportunity was not utilized. Up to the time this application was set before me for determination, the ruling remains conspicuously absent. No explanation has been provided for this failure, nor has any subsequent application been made to file the missing document.

13. In the end I find that this application is for dismissal and cannot be entertained by this Court. It is dismissed with no orders as to costs.

**Dated and delivered at Nakuru this 21<sup>st</sup> day of October, 2025.**

**M. WARSAME**

.....  
**JUDGE OF APPEAL**

*I certify that this is a true  
copy of the original*

**Signed**  
**DEPUTY REGISTRAR**