



REPUBLIC OF KENYA



**In re Estate of Ignatius Muguiyi Muturi alias Ignatius LM Muturi alias
Dr Ignatius Muguiyi Muturi (Deceased) (Probate & Administration
E012 of 2021) [2025] KEHC 15020 (KLR) (24 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15020 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
PROBATE & ADMINISTRATION E012 OF 2021**

MA ODERO, J

OCTOBER 24, 2025

**IN THE MATTER OF THE ESTATE OF IGNATIUS MUGUIYI MUTURI ALIAS
IGNATIUS L. M. MUTURI ALIAS DR. IGNATIUS MUGUIYI MUTURI (DECEASED)**

RULING

1. Before this Court are two (2) applications for determination. First is the Summons dated 16th July 2024 by which the Applicant/Protector Florence Wanjira Karungu (Guardian Ad Litem for Timothy Karungu and Sarah Njeri) seeks the following orders;-
 - “ 1. That the Honorable Court be pleased to order that a sibling Deoxyribonucleic Acid (DNA) test be undertaken with a view ascertaining the paternity of the children of the protestor/applicant herein using samples from the 1st petitioner/respondent’s children within 2 days or any known children of the deceased.
 2. That the Honorable Court be pleased to order that the petitioner respondent’s children do avail themselves at the government chemist together with the children of the protestor/applicant to give a sample for the sibling DNA test within 21 days from the date of the order herein.
 3. That the Honorable do order that the said samples be submitted by the government chemist within 30 days from the date which the sample tests have been undertaken.
 4. That each party does meet the costs of their DNA test.
 5. That the costs of the application be in the cause.
2. The Application was supported by the Affidavit of even date sworn by the Applicant.



3. In response to this application the Applicants filed a Notice of Preliminary Objection dated 30th July 2024. On their part the Respondents/Administrators of the estate Miriam Wangu Muturi And Anthony Muguiyi Muturi filed an application dated 28th November 2024 seeking the following orders;-
 - “ 1. That the Honorable Court be pleased to enlarge time within which applicants may apply for leave to appeal to the Court of Appeal against ruling dated 15th day of November 2024.
 2. That the Notice of Appeal filed and served upon the respondents be deemed as duly filed upon leave being granted.
 3. That the costs of this application be provided for.”
4. The application which was premised upon Section 7 and Rules 76 and 77 of the *Appellate Jurisdiction Act* was supported by the Affidavit of even date sworn by the 1st Respondent.
5. The applicant opposed this application through the Replying Affidavit dated 16th December 2024. The Court directed that the two applications be heard together and be canvassed by way of written submissions. The Applicant filed the written submissions dated 1st July 2025 whilst the Respondents relied upon their written submissions also dated 1st July 2025.

Analysis And Determination

6. I have carefully considered the two applications before this Court as well as the affidavits filed in support thereof and the written submissions filed by the parties.
 - (i) Summons dated 28th November 2024.
7. By this application the Respondents who are the Administrators of the Estate of the late Dr Ignatius Muguiyi Muturi (hereinafter the Deceased') sought leave to file an appeal against the ruling delivered by this Court on 15th November 2024. In the said ruling the Court dismissed the Notice of Preliminary Objection dated 30th July 2024 which had been filed by the Respondent challenging the application dated 16th July 2024 filed by the Applicant seeking orders to compel the Respondents to submit to sibling DNA testing in order to establish the paternity of the Applicants two minor children.
8. Following the dismissal of their Preliminary Objection the Respondents filed an application seeking enlargement of time within which to file an appeal against the dismissal of their Preliminary Objection.
9. The Respondents submit that fourteen (14) days have elapsed since delivery of the ruling necessitating this application for extension of time. That their intended appeal is not frivolous and has high chances of success. That the Respondents will suffer prejudice if the orders sought are not granted.
10. The only issue for determination is whether the Respondents require leave from the High Court to file an appeal to the Court of Appeal.
11. The *Law of Succession Act* Cap 160 Laws of Kenya contains no express provision for appeal to the Court of Appeal i.e. appeal of succession causes to the Court of Appeal does not exist as of right.



12. Section 50 (1) of the said Act provides as follows

“50(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.

13. Therefore Section 50(1) only provides for appeal from the Magistrates courts to the High Court but remains silent on appeals to the Court of Appeal.

14. However with leave of the Court granted through its discretion as provided for by Section 47 of the *Law of Succession Act* an appeal may lie to the Court of Appeal from a decision of the High Court in the exercise of its Original jurisdiction.

15. In the case of Rhoda Wairimu Karanja and Another -vs- Mary Wangui Karanja & Another [2014] eKLR the Court of Appeal made the following observations regarding appeal in succession matters:-

“We do not think section 50 of the *Law of Succession Act* intended to limit appeals to this court and allowing decisions of the Kadhis Court be challenged upto this Court Succession (read family) disputes are the most acrimonious kind of litigation all over the world in the past and today.In view of these and given the adversarial nature of litigation in our system of justice it would be unconsonable 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 creation of the Supreme Court as the apex Court.”

16. The same court then concluded as follows:-

“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 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 merits serious consideration. We think this is good practice that ought to be retained in order to promote finality and expedition in the determination of probate and administration disputes.”

17. In exercising the discretion of whether or not to enlarge time for filing an appeal the court must put into consideration several factors. Firstly the ruling in question was delivered on 15th November 2024 in presence of both parties. This application seeking to enlarge time was made on 28th November 2024 barely thirteen (13) days after delivery of the ruling. It was filed within fourteen (14) days.

18. The issue under consideration in this case is the paternity of the Applicants two children. The Applicant sought that the Respondents be compelled to avail themselves so that a sibling DNA may be conducted. Certainly the Respondents have great stake in the outcome of the DNA as they have denied any link between the Deceased (who is their father) and the Applicants two children.

19. I have perused the annexed draft Memorandum of Appeal (Annexure MWM -2) and in my view the same raises triable issues.

20. Finally I do allow this application and grant the Respondents leave to move to the Court of Appeal. The Appeal to be filed and served within fourteen (14) days failing which said leave will automatically lapse with no further reference to the Respondents.



21. Given my decision above I will refrain from considering the application dated 16th July 2024. The same to await the outcome of the appeal (if any). Since this application was necessitated by the Respondents omission, I direct that costs will be met by the Respondents.

DATED IN NYERI THIS 24TH DAY OF OCTOBER 2025.

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MAUREEN A. ODERO

JUDGE

