



REPUBLIC OF KENYA



In re Estate of the late Kibara Njagi - Deceased (Succession Cause 964 of 2013) [2025] KEHC 15028 (KLR) (23 October 2025) (Ruling)

Neutral citation: [2025] KEHC 15028 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
SUCCESSION CAUSE 964 OF 2013
EM MURIITHI, J
OCTOBER 23, 2025**

BETWEEN

PETER MURIITHI KIBARA APPLICANT

AND

STANLEY MARINGA KIBARA RESPONDENT

RULING

1. The Applicant filed summons dated 2nd July, 2025 seeking the following orders:
 1. Spent.
 2. That this court do extend time for the applicant to seek leave to appeal from the ruling delivered by Justice Mwango on 9/8/2024.
 3. This court do grant the applicant leave to appeal from the ruling delivered by Justice Mwango on 9/8/2024.
 4. Costs be provided for.
2. The applicant filed a supporting affidavit setting out the applicant's case that the estate relates to his father's estate one Kibara Njagi, deceased. On 9/8/2024 this court delivered a judgment distributing the estate of Kibara Njagi. He was dissatisfied with the judgment and filed a notice of appeal and memorandum of appeal.
3. Further, he inadvertently failed to seek leave to appeal within 14 days or at all after the ruling of this court delivered on 9/8/2024. On 20/6/2025 the court struck out his application on grounds that he had not obtained leave to appeal. The failure to apply for leave was pure oversight as he was under an impression that he could appeal as of right from the judgment like other matters and it was an honest mistake.



4. Lastly, he seeks this court to grant him leave to appeal outside the 14 days after the ruling was read to enable him regularize his appeal which he has already filed in time.
5. The Respondent opposed the application by his Replying Affidavit urging that the ruling sought to be impugned was delivered in the presence of counsel for both parties. No application was made informally on the date of delivery of ruling for leave, or formally within 14 days of the delivery of the ruling, as per Rule 39 of the Court of Appeal Rules.
6. Further, other than the application that was struck out, the applicant has deliberately failed to disclose that there was yet another application seeking similar orders filed in Nyeri Court of Appeal Civil Application number E201 of 2024 but which was withdrawn on 1st April, 2025.
7. Lastly, in view of the fact that the appeal is incompetent for having been filed without leave which was a pre-requisite to the filing of the appeal, the applicant has not stated what purpose the orders sought will serve as the Court of Appeal lacks jurisdiction to hear and determine the already filed appeal, as per the second paragraph (numbered 17) on the last page of the ruling in C.A Civil Appl. No. Eo83 of 2024.

Submissions

8. The Counsel for the parties did not file submissions but relied on the respective affidavits filed.

Issues for determination

9. The issues for determination in this application are two fold:
 1. Whether the applicant should be allowed to seek leave to appeal out of time.
 2. Whether the applicant should be granted leave to appeal to the Court of Appeal.

Analysis

Whether the application for extension of time to seek leave to appeal should be allowed.
10. The applicant pray that this court do extend time to seek leave to appeal from the ruling delivered by Justice Mwangi on 9/8/2024.
11. The relief sought in this application are for the extension of time for seeking leave to appeal and for that leave to appeal to the Court of Appeal.
12. On substantive law, section 7 of the [Appellate Jurisdiction Act](#) provides as follows:

“7. Power of High Court to extend time

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: Provided that in the case of a sentence of death no extension of time shall be granted after the issue of the warrant for the execution of that sentence.

See for example *Clement Wekesa Muuyi & another v Patrick Wekesa Okumu (Sued as Representative of the Estate of Okumu Masai (Deceased) [2020] eKLR (B.N. Olao, J.)*.



13. The applicable procedure is set out in Rule 41 of The Court of Appeal Rules Legal Notice 40 of 2022 provide as follows:

“41. Application for leave to appeal in civil matters

1. In a civil matter—
 - a. where an appeal lies with the leave of the superior court, application for such leave may be made—
 - i. informally at the time when the decision against which it is desired to appeal is given; or
 - ii. by motion or chamber summons according to the practice of the superior court, within fourteen days of such decision;”
14. In accordance with Order 50 rule 6 of the Civil Procedure Rules, the power to extend time to take any step under the Rules is provided for as follows:

“6. Power to enlarge time [Order 50, rule 6]

Where a limited time has been fixed for doing any act or taking any proceedings under these Rules, or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed:

Provided that the costs of any application to extend such time and of any order made thereon shall be borne by the parties making such application, unless the court orders otherwise.”

15. The failure to seek leave to appeal is honestly explained by the applicant as “purely oversight as I was under the impression that I could appeal as of right from the judgment like other matters and it was an honest mistake [and] that it is only on 20/6/2025 that it became clear to me that the law of succession has no express right of appeal.”
16. Although couched in the words admitting mistake of the litigant, it is in truth the failure to seek leave to appeal fall on the appellant’s counsel as the legal advisor to follow the rules of Court, which, with respect, may yet not be visited on the appellant. In the interests of justice, the Court will grant the extension of time to seek leave to appeal.

Whether the applicant should be granted leave to appeal

17. The Court has considered the guidance by the Court of Appeal decision in this matter Peter Muriithi Kibara v. Stanley Maringa Kibara Nyeri Court of Appeal Civil Application NO. E083 of 2024 [reported as Kibara v Kibara [2025] KECA 1091 (KLR)] on requirement of leave to appeal in succession cases in cited by the Court in Civil Application No. E083 of 2024 as follows:

10. This Court stated in the case of Nkoliai vs. Oloparaki & 2 Others [2023] KECA 1228 (KLR) regarding leave to appeal in succession matters:

“The *Law of Succession Act* provides for no express right of appeal in such a matter. This then brings into play the competing interests between article 163(4) of *the Constitution*, section 3(1) and (2) of the *Appellate Jurisdiction Act*, and the *Law of Succession Act*. The *Law of Succession Act* provides for no right of appeal to this



Court while section 3(1) of the [Appellate Jurisdiction Act](#) limits appeals to this Court from the High Court as prescribed by an Act of Parliament. Article 164(3) of [the Constitution](#) on the other hand clothes this Court with the jurisdiction to hear and determine appeals emanating from the High Court or any other court or tribunal as prescribed by an Act of Parliament. Whereas a litigant in a succession matter should not be denied the right of appeal, such a right ought to be subjected to scrutiny in order to justify the expenditure of the limited resources on the matter. To this end, we are persuaded by the holding of this Court in John Mwita Murimi & 2 others vs. Mwikabe Chacha Mwita & another [2019] eKLR that:

“It is not in dispute that the impugned ruling in this matter arises from a succession cause and the respondents did not obtain leave to appeal. The decision in Makhangu – v- Kibwana [1996] EA cited by the respondent was succinctly considered by this Court in Rhoda Wairimu Karanja & another – v- Mary Wangui Karanja & another [2014] eKLR. In analyzing the Makhangu decision (supra), this Court held 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, exercising original jurisdiction with leave of the High Court or where the application for leave is refused with leave of this Court.

17. It is our conclusion that leave to appeal was a pre-requisite in the present appeal. We note that the same was not obtained prior to filing of this appeal. Consequently, this Court lacks the requisite jurisdiction to hear and determine this appeal. For the stated reason, this appeal is struck out.”
18. It is common ground now that leave was necessary to appeal the decision of the High Court as a succession court. The applicant avers that he inadvertently failed to seek leave to appeal within 14 days or at all after the ruling of this court delivered on 9/8/2024. On 20/6/2025 the court struck out his application on grounds that he had not obtained leave to appeal. The failure to apply for leave was pure oversight as he was under an impression that he could appeal as of right from the judgment like other matters and it was an honest mistake.
19. On the factors to be considered in an application for leave to appeal a decision of the High Court as a succession court, the decision of the Court of Appeal in the case of Rhoda Wairimu Kioi & John Kioi Karanja v Mary Wangui Karanja and Salome Njeri Karanja, CA Civil App. NAI 69 of 2004 held that:-

“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, exercising original jurisdiction with leave 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 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. So, what is our determination in this application? We have found that the application was presented out of time; that the applicant lacked capacity to bring it at the time he did; that leave of the High Court in succession matters is necessary in the former’s exercise of its original jurisdiction; and that where application for leave has been rejected by the High Court, it can be made to this court.”
20. The question is therefore whether, prima facie, it appears that there are grounds which merit serious judicial consideration by the Court of Appeal. The intended appeal raises several grounds on the



distribution of the deceased estate among the 15 beneficiaries. Indeed, the Memorandum of Appeal discloses a substantial question to be presented before the Court of Appeal including whether on the facts the some of the children of the polygamous deceased had been allocated land by the Clan to hold upon trust for their siblings and whether some of the children from three of the four houses of the deceased had been given assets during the life of the deceased justifying the distribution of the asset LR No. INOI/NDIMI/276, the subject of the dispute herein to the one of the respondent's four houses.

21. The Court has also considered the bona fides of the applicant in seeking to appeal the decision of the Court. If anything, the multiple applications - two filed in the Court - Civil Application No. E201 of 2024 and E083 of 2024 demonstrate a keen interest in having the matter heard by a higher court. On the facts of the case, the Court is able to discern a clear desire to have the dispute adjudicated upon by a higher court pursuant to his right of fair hearing akin to the right to a fair trial under Article 50 (2) of *the Constitution* to “to appeal to, or apply for review by, a higher court as prescribed by law.”

Extension of time to file Notice of Appeal

22. Although tagentially raised by the Respondent in the Replying Affidavit, the issue of extension of time to file appeal, which is a different matter is not before this court (see reliefs sought above), but the Court would observe that failure to file the Notice of Appeal within 14 days of the decision of the High Court on 9/8/2024, and its filing the 28/8/2024 – a short delay of five (5) days out of the time prescribed for filing of the Notice of Appeal - is not inordinate, and may be excused if an explanation is given for the delay.
23. However, there is no application before this court for extension of time to file the appeal. Any extension of time to file the appeal, leave for which is hereby granted, should be obtained from the Court of Appeal, to avoid duplication of costs by another application first before this court, in the interests of the overriding objective of the civil process for expeditious disposal of disputes at proportionate cost well encapsulated under section 1A and 1B and 3A and 3B of the *Civil Procedure Act* and the *Appellate Jurisdiction Act*, respectively.
24. The Respondent avers that the applicant has not stated what purpose the orders sought will serve as the Court of Appeal lacks jurisdiction to hear and determine the already filed appeal. Nevertheless, this court does not decided whether the filed appeal may be regularized after leave to appeal has been granted, which is a question the Court of Appeal may be called to determine, and, consequently, the appellants shall be left to his devices and advice of his Counsel as to the next steps in the matter.

Conclusion

25. The Court grants application for (1) the extension of time to seek leave to appeal and (2) leave of Court to appeal to the Court of Appeal from the decision of this Court on distribution of the estate made on 9th August 2024.

Orders

26. Accordingly, for the reasons set out above, the Court finds merit in the application for extension of time to seek leave and for the grant of leave to appeal from the decision of the Court in this Succession Cause.
27. In accordance with order 50 Rule 6 of the Civil Procedure Rules, the Applicant shall pay to the Respondent the costs of this application.

Orders accordingly.



DATED AND DELIVERED THIS 23RD DAY OF OCTOBER 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Ms. A Thungu for the Applicant.

Mr. Mwangi for Mr. M. Kagio for the Respondent.

