



**In re Estate of M'murong'a alias Murong'a Mungania (Deceased) (Family Appeal E013 of 2024) [2025] KEHC 14793 (KLR) (13 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14793 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
FAMILY APPEAL E013 OF 2024  
SM GITHINJI, J  
OCTOBER 13, 2025**

**BETWEEN**

**SAMWEL NDUBAI MURONG'A ..... APPLICANT**

**AND**

**SUSANA KANYATTA ..... RESPONDENT**

**RULING**

1. For determination is the Notice of Motion dated 10/7/2025 pursuant to Section 47 of the [Law of Succession Act](#) and Rules 49 & 73 of the Probate and Administration Rules, seeking that:
  1. Spent
  2. Leave be granted to the applicant to file an appeal out of time against the Judgment/decree of this court delivered on 24.6.2025.
  3. Costs be in the cause.
2. The application is premised on the grounds that there is no right of appeal to the Court of Appeal, and the grounds of appeal are serious, which warrant interpretation by the Court of Appeal.
3. The Respondent swore a replying affidavit on 25/8/2025 in opposition to the application. She averred that this court judiciously applied the provisions of section 76 of the [Law of Succession Act](#), in finding that the grant was neither obtained through defective proceedings nor fraudulent means. Further, the distribution of the estate was done equally among all the beneficiaries, and the application ought to be dismissed with costs.
4. The application was canvassed orally in court on 1/10/2025, and a ruling was reserved.

**Determination**

5. The singular issue for determination is whether the leave sought should issue.



6. Section 7 of the Appellate Court Act expressly grants the High Court power to extend time 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: 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.”
7. There is undoubtedly no automatic right of appeal to the Court of Appeal under section 50 of the Law of Succession Act, as espoused by the Court of Appeal in *Nkoliai v Oloparaki & 2 others* (Civil Appeal 63 of 2019) [2023] KECA 1228 (KLR) (6 October 2023) (Judgment), as follows: “As we have already stated, the Law of Succession Act is silent on the right of appeal from a decision of the High Court in exercise of its original jurisdiction. Nevertheless, article 48 of the Constitution on the right to access justice; article 50 (1) of the Constitution on the right to a fair hearing and to have any dispute that can be resolved by application of the law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body; and, article 164 (3) of the Constitution on the right of appeal would provide a solution to this grey area. However, in recognition of the need to filter matters that come to this Court for consideration, the requirement for leave, just as is provided for in respect to appeals on Muslim law under section 50 (2) of the Law of Succession Act, ought to be called to play in appeals emanating from the High Court. 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.”
8. The intended appeal arises from the decision of this court delivered on 24/6/2025, where the court found that the Applicant had fully participated in the proceedings culminating in the confirmation of the grant.
9. Ordinarily, leave to appeal to the Court of Appeal will be granted where it has been demonstrated that there is a serious question to be addressed by the appellate court. Although the Applicant has not exhibited a draft memorandum of appeal to gauge the arguability or otherwise of his intended appeal, his serious grievance for consideration by the Court of Appeal, as can be deciphered from paragraph 4 of his supporting affidavit, is this court’s injudicious application of the provisions of section 76 of the Law of Succession Act.
10. In view of the distribution of the estate property equally among the beneficiaries, I am unpersuaded that the Applicant has a real grievance to be considered by the Court of Appeal, and I therefore decline to grant the leave sought. However, the Applicant is at liberty to seek leave in the appellate court, as was held by the Court of Appeal in *Rhoda Wairimu Karanja & Another v Mary Wangui Karanja & Another* [2014 eKLR 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.”
11. Consequently, I find that the application dated 10/7/2025 is in want of merit and it is hereby dismissed. Costs in the cause.

**DATED AND DELIVERED AT MERU THIS 13<sup>TH</sup> OCTOBER, 2025**

**S.M. GITHINJI**

**JUDGE**

**APPEARANCES:-**

Mrs. Mwanzia for the Appellant.



Mr. Ngeera for the Respondent.

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