

**IN THE COURT OF APPEAL  
AT ELDORET**

**CORAM: MATIVO, JA (IN CHAMBERS)**

**CIVIL APPLICATION NO. NAK E025 OF**

**2025 BETWEEN**

**ABRAHAM KIBET.....APPLICANT  
AND**

**PAULINE CHEPKEMOI KIBET.....1<sup>ST</sup>  
RESPONDENT  
ELIZABETH JEPCHIRCHIR SANG.....2<sup>ND</sup>  
RESPONDENT JULIUS KIKEMBOI  
KIBET.....3<sup>RD</sup> RESPONDENT SYLVESTER  
KIPLANGAT KIBET.....4<sup>TH</sup> RESPONDENT**

*(Being an application for leave to appeal against the ruling of the High Court of Kenya at Eldoret (R. Nyakundi, J.) dated 15<sup>th</sup> November, 2024*

*in*

***Succession No. 105 of 2010).***

**\*\*\*\*\***

**RULING**

1. Abraham Kibet (the applicant) has approached this Court by way of notice of motion dated 24<sup>th</sup> March 2025 seeking two substantive reliefs namely that:

- a) the applicant be granted leave to prefer an appeal against the ruling by the High Court of Kenya at Eldoret (Hon. Justice Reuben Nyakundi) delivered on the 15<sup>th</sup> November 2024 in Eldoret High Court Succession Cause No. 105 of 2010.***
- b) this Honorable Court be pleased to grant an order of stay of the execution of the decree***

***arising from ruling***

***delivered on 15<sup>th</sup> day of November 2024 pending the hearing and determination of the intended appeal.***

2. The application is premised on Rule 41 of this Court's Rules, 2022. It is supported by grounds on its body and a supporting affidavit sworn on 24<sup>th</sup> March 2025 by Abraham Kibet who is the applicant.
  
3. The application before me what is referred to as an omnibus application, brought under a number of rules and seeking a variety of orders that cannot, under this Court's rules, be heard and determined together by a single judge. Therefore, the prayer seeking orders staying the execution of the Judgment and orders delivered on 15<sup>th</sup> November 2024 by *Nyakundi, J* in Eldoret High Court succession Cause No. 105 of 2010 is not properly before me and as a result this Court will only render its verdict on the prayer seeking leave to the applicant to prefer an appeal against the ruling by the High Court of Kenya at Eldoret (Hon. Justice Reuben Nyakundi) delivered on the 15<sup>th</sup> of November 2024 in Eldoret High Court Succession Cause No. 105 of 2010.

4. The grounds in support of the application are that:- (a) the amended certificate of confirmation of grant vide ruling rendered 15<sup>th</sup> November 2024 which proposed further mode of distribution without an appropriate application being filed nor the parties being invited to address the Court on fresh distribution of the estate has occasioned a serious miscarriage of justice; (b) the amended grant has created unfairness in the distribution and confusion instead of resolving the distribution dilemma; (c) being aggrieved, the applicant filed an application dated 19<sup>th</sup> December 2024 seeking leave to appeal against the ruling delivered on 15<sup>th</sup> November 2024; (d) vide ruling delivered on 11<sup>th</sup> March 2025 the Superior Court dismissed the applicants' application on the basis that the applicant had no grounds that met judicial consideration; (e) the skewed distribution if not stayed will be disenfranchises the applicant.
5. The application is opposed by the 2<sup>nd</sup> respondent vide replying affidavit sworn on 24<sup>th</sup> November 2025 by Elizabeth Jepchirchir Sang on the following grounds: a) the applicant's application seeking leave was dismissed vide ruling dated 11<sup>th</sup> March 2025 for being defective and

incurable since it was filed

out of time and no leave was sought to enlarge time to file contrary to Rule 41 (1) (a) (ii) of the Court of Appeal Rules 2022; b) there is a serious conflict of interest since Mr. Tororei who is the applicant's counsel was also counsel for the 4th respondent who is the fourth administrator of the estate of Kibet Sang; c) all the properties forming part of the estate had been listed in an affidavit which was considered by the Superior court while identifying the free assets of the deceased; and d) the appointment of M/s Tororei & Company Advocates offends the provisions of order 9 rule 7 of the Civil Procedure Rules 2010 and Rule 23 of the Court of Appeal Rules and any pleading filed by the said firm are *void ab initio*.

6. The applicant's counsel vide submission dated 25<sup>th</sup> November 2025 maintained that the intended appeal raises several serious issues and is therefore arguable. To demonstrate the arguability counsel submitted that the distribution sanctioned by the High Court resulted in gross disparities between the children of the 1<sup>st</sup> house and those of the other houses.

7. Regarding the intended appeal being rendered nugatory counsel maintained that execution has already commenced including subdivisions assisted by police. Therefore, if the subdivision proceeds and the titles issue the reversal will be practically impossible.
8. In opposing the application vide submissions dated 24<sup>th</sup> November 2025, counsel for the 2<sup>nd</sup> respondent reiterated the contents of the 2<sup>nd</sup> respondent's replying affidavit sworn on 24<sup>th</sup> November 2025 and maintained that the applicant having sworn the affidavit in Australia before the Notary Public, it was the same notary who ought to have sealed the annexures serialized and sign as proof that those were exhibits the applicant intended to rely on and produced when he appeared before him. However, the annexures were sealed in Kenya and without the signature of a commissioner of oaths.
9. On whether leave should be granted to appeal, counsel contended that the instant application was filed outside the fourteen days stipulated under Rule 41 (i) (b) (ii) of the Court of Appeal Rules and looking at the instant application, the applicant is not seeking a review of the decision of the

Superior

Court denying him leave but he is seeking leave of Court at the first instance. Therefore, the applicant has not met the requirements of Rule 41 of this Court and leave should be denied.

10. I have considered the parties' rival pleadings and submissions.

Rule 41 of the Court of Appeal Rules on application for leave to appeal in civil matters provides that:-

***“(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;***

***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.***

11. It is noteworthy that *Nyakundi, J.* delivered the impugned ruling on 11<sup>th</sup> March 2025 where he declined to grant the applicant leave to appeal against his decision made on 15<sup>th</sup> November 2024. The applicant had fourteen days to file the

instant application. It is noteworthy that the instant

application was filed on 27<sup>th</sup> March 2025 two days outside the prescribed period.

12. Ultimately, even if I was to consider the motion on merit, I would still have to be persuaded under Rule 4 of this Court Rules, 2022 why the 14 days period required by rule 41(1) (b) (ii) of this Court to approach this Court was not met or complied with. The applicant has not given or offered any explanation why there was lack of compliance with timeliness set in law and in those premises, I am unable to exercise my direction in his favour. I find the application to have no merit and I dismiss it with costs to the respondents.

**Dated and delivered at Eldoret this 27<sup>th</sup> day of November, 2025.**

**J. MATIVO**

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

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

*Signed.*

**DEPUTY REGISTRAR.**