



REPUBLIC OF KENYA



**KENYA LAW**  
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**Karuru v Karuru & another (Civil Appeal E106 of 2024)  
[2025] KEHC 16952 (KLR) (12 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16952 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
CIVIL APPEAL E106 OF 2024  
CW GITHUA, J  
NOVEMBER 12, 2025**

**BETWEEN**

**HARUN MWAURA KARURU ..... APPELLANT**

**AND**

**DAVID NDUNG'U KARURU ..... 1<sup>ST</sup> RESPONDENT**

**ELUID MBURU KARURU ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This ruling is in respect of a preliminary objection raised by the respondents challenging the competence of the appeal filed by the appellant vide the memorandum of appeal dated 18<sup>th</sup> October 2024. The respondents invite this court to find that it lacks jurisdiction to hear and determine the appeal as well as the appellant's application dated 28<sup>th</sup> October 2024.
2. The preliminary objection was raised in the 2<sup>nd</sup> respondent's replying affidavit sworn on 8<sup>th</sup> November 2024 on his behalf and on behalf of the 1<sup>st</sup> respondent in response to the appellant's Notice of Motion dated 28<sup>th</sup> October 2024. In the application, the appellant sought stay of execution of the trial court's judgment and certificate of confirmation of grant issued in Kandara Succession Cause No.E120 of 2022 and all consequential orders pending the hearing and determination of the appeal.
3. In his replying affidavit, the 2<sup>nd</sup> respondent strenuously contested the application. He gave an elaborate background to the distribution of the deceased's Estate as ordered in the impugned judgement. In addition, he contended that the respondent had consented to the proposed mode of distribution of the deceased's Estate and that this position had been confirmed by his learned counsel who had admitted in his submissions that the appellant was not faulting the decision of the trial court; that this admission ousted the appellate jurisdiction of this court.
4. On 26<sup>th</sup> March 2025, the court directed that the preliminary objection be prosecuted by way of written submissions. The respondents' submissions dated 28<sup>th</sup> March 2025 were filed by their advocates on



record Ms. Karuru Mwaura & Company Advocates while those of the appellant dated 3<sup>rd</sup> April 2025 were fled on his behalf by Ms. Daniel Henry & Company Advocates.

5. I have carefully considered the preliminary objection and the rival submissions made on behalf of the parties as well as the authorities cited. Having done so, i find that the only issue for my determination is whether the preliminary objection is merited.

6. The starting point is a consideration of whether the preliminary objection raised by the respondents qualifies to be a preliminary objection within the meaning recognized by the law.

What in law constitutes a preliminary objection has been a matter of discussion in many authorities decided by this court, the Court of Appeal and even the Supreme Court.

7. In the locus classicus case on the subject which is Mukisa Biscuit Company V West End Distributors Ltd [1969] EA 696, Sir Charles Newbold defined a preliminary objection in the following terms;

“A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.....A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

8. The Supreme Court in its decision in Aviation & Allied Workers Union Kenya V Kenya Airways Limited & 3 others [2015] eKLR weighed in on the subject by citing with approval the Mukisa Biscuit case (supra) and proceeded to observe as follows;

“Thus a preliminary objection may only be raised on a ‘pure question of law’. To discern such a point of law, the court had to be satisfied that there is no proper contest as to the facts. The facts are deemed agreed, as they are prime facts presented in the pleadings on record.”

9. As the preliminary objection in this case raises a jurisdictional point, I am satisfied that it meets the threshold of a preliminary point of law considering that it was capable of disposing of the appellants appeal and application summarily.

10. Turning now to the merits or demerits of the objection, a perusal of the memorandum of appeal dated 18<sup>th</sup> October 2024 reveals that the appellant’s appeal is predicated on two grounds which are reproduced hereinbelow;

(i) That the judgement of the learned trial magistrate was obtained by deceit, undue influence and material non-disclosure of the actual ground position on distribution of the Estate of the Deceased.

(ii) That the distribution of the Estate of the Deceased was procured by illegal, irregular and unprocedural means thereby misleading the court and in effect occasioning a miscarriage of justice.

11. From the above grounds of appeal, it is clear that the appellant did not claim or complain that the learned trial magistrate erred in either fact or in law in arriving at the decision challenged on appeal. As a matter of fact, the appellant confirmed to the court on two occasions that he was not faulting the decision of the trial magistrate since he had participated and consented to the mode of



distribution adopted by the trial court in its judgement. The first occasion was in his learned counsel's oral submissions on 5<sup>th</sup> November 2024 when the appellant's application was fixed for mention for directions. The second occasion was in his written submissions filed in response to the instant preliminary objection.

11. Given the above admissions and the material placed me, it is clear that the appellant's complaints relate to post judgement events or matters that came to his knowledge after the trial court's judgement was delivered. They were therefore not matters that were dealt with by the trial court in its proceedings and judgement and they were thus not part of the lower court's record.
12. The question that must now be answered is this – if the appellant was satisfied or had no complaints against the judgement of the trial court, what then is sought to be corrected on appeal?
13. Whereas I agree with the appellant's submissions that under Section 47 of the Law of Succession Act (the Act), this court has jurisdiction to entertain any application and determine any dispute under the Act but this jurisdiction in my opinion relates to the court's original as opposed to its appellate jurisdiction.
14. I also agree with the appellant's submission that Section 50 (1) of the Act provides for a right of appeal to the High Court in respect of any order or decree made by a Resident Magistrate in respect of any Estate. The provision proceeds to stipulate that the decision of the High Court on such appeals such be final.
15. It is however common knowledge that the right of appeal accrues to a party who was aggrieved by the order or decree of the trial court because of errors of commission or omission made by the trial court which ought to be corrected on appeal.
16. As held by the Court of Appeal in Attorney General V George Bala [2023] KECA 117 (KLR) an appeal is the medium through which an aggrieved party enters a superior court invoking its aid and interposition to redress an error of the court below.
17. In this case, the appellant has consistently admitted that he finds no fault in the judgement delivered by the trial court which he has challenged on appeal. Having not impeached the validity of the aforesaid judgement, it is my finding that the instant appeal fails to properly invoke this court's appellate jurisdiction as there is nothing this court is requested to correct in the exercise of its appellate jurisdiction. As stated earlier, the appellants complaints relate to post judgement events not errors committed by the trial court in the process of arriving at its decision.
18. In view of the foregoing, I have no doubt in my mind and I wholly concur with the respondents' contention that the appellant's appeal is not properly before this court and is incompetent for failing to properly invoke this court's appellate jurisdiction. From the material placed before me, I can comfortably say that the appellant's remedy lies elsewhere but not in an appeal.
19. Having found like I have above, it is my conclusion that the respondent's preliminary objection is merited and it is hereby upheld.  
  
The appellant's appeal is consequently struck out and with it goes the appellant's application dated 28<sup>th</sup> October 2025 which automatically falls by the wayside.
20. Lastly, on costs, although as a general rule costs follow the event, they are awarded at the court's discretion. As the impugned appeal stemmed from a succession dispute involving siblings, I will not make any order on costs.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT MURANGA THIS 12<sup>TH</sup> DAY OF NOVEMBER 2025.**



**HON. C. W. GITHUA**

**JUDGE**

In the presence of:

Mr. Mungai holding brief for Mr. Mwaura for the respondents

Mr. Gachau for the Appellant/Applicant

Ms. Susan Waiganjo, Court Assistant

