



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERUGOYA**  
**HCFMISC. NO 86 OF 2013**

**JANNIFER NJERI NGARE.....APPLICANT**

**VERSUS**

**FAITH WAMWEA MBOGO.....RESPONDENT**

**RULING**

[1] The applicant filed a Notice of Motion dated 2<sup>nd</sup> May, 2025 seeking the following orders:

1. That the Honourable Court be pleased to grant the applicant leave to appeal to the Court of Appeal against the Judgment of the Honourable Court dated 8<sup>th</sup> April, 2025.
2. That the costs of this application be in the intended appeal.

[2] The application is based on the grounds on the face of the application and the supporting affidavit of the applicant. The applicant's case is that the Honourable Court made a Judgment on 8<sup>th</sup> April, 2025. The applicant filed a Notice of Appeal dated 15<sup>th</sup> April, 2025.

[3] The applicant avers that she has an arguable appeal against the Judgment of the Court as is clear from the Applicant's draft Memorandum of Appeal dated 2<sup>nd</sup> May, 2025.

[4] The Respondent deposed to a Replying Affidavit and avers that the Applicant ought to have filed her Appeal on or before 8<sup>th</sup> May, 2025, as required by the law however, she declined to do so. The Applicant herein has not adduced any reasons for the inordinate delay in filing her Appeal. The Honourable Court has no jurisdiction to grant the prayers sought.

[5] Further, the respondent avers that the Applicant is out to stop the Respondent from enjoying the fruits of her judgment.

[6] Lastly, the intended Appeal has no chances of success as the issues raised are frivolous and therefore not arguable.

### **Applicant's submissions**

[7] The Applicant herein is seeking leave to appeal to the Court of Appeal against the judgment of HON. JUSTICE R. MWONGO delivered on 8<sup>th</sup> April, 2025 in KERUGOYA MISCELLANEOUS SUCCESSION CAUSE NO. 86 OF 2013.

[8] The applicant submits that the Law of Succession Act and the Probate and Administration Rules are silent when it comes to filing of an appeal to the Court of Appeal against the decision of the High Court when it is exercising its original jurisdiction. One has to therefore seek leave from the High Court so as to file an Appeal to the Court of Appeal.

[9] The applicant relies on the case of *ELIUD MWENDIA WANDI V JANE MUTHONI MUCHIRA* 2021 KECA 1016 KLR whereby the Court of Appeal struck out an appeal as the Appellant had not sought leave in the High Court to file the appeal in the Court of Appeal. The court had this to say: -

*“The issue of a right of appeal to the Court of Appeal from decisions of the High Court in matters under the Succession Act has been addressed severally by this Court. In Rhoda Wairimu Karanja & another v Mary Wangui Karanja & another [2014] eKLR, the Court having addressed the differing views on this issue concluded 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.*

*We find that Eliud needed leave of the court, to file an appeal against the judgment of the High Court in Kerugoya Succession Cause No. 175*

*of 2012 rendered under the Law of Succession Act. No such leave was exhibited and therefore the appeal before us is incompetent and is accordingly struck out.*

[10] Lastly, the applicant submits that the Notice of Appeal was filed within 14 days after the delivery of the judgement. The judgment was delivered on 8<sup>th</sup> April, 2025 and the Applicant herein filed the Notice of Appeal dated 15<sup>th</sup> April, 2025. The Notice of Appeal was served upon the Respondent's counsel on 16<sup>th</sup> April, 2015.

### **Respondent's submissions**

[11] The respondent submits that there is no right of automatic appeal to the Court of Appeal on a decision where the High Court is exercising original Jurisdiction. This was held in the case of **Rhoda Wainmu Kranja & another Versus Mary Wangui Karanja & Another (2014).**

[12] Further, the Applicant has not demonstrated prima facie grounds that merit serious consideration. The applicant needs to identify specific legal or factual basis that would potentially lead to a different outcome on Appeal. The mere assertion of being dissatisfied and aggrieved by the Court's decision is not a valid ground to seek leave to appeal.

[13] In ***Re Estate of the late Kibet Sang*** Succession cause E105 of 2020 2025 KEHC, the High Court in deciding on an application of the same nature to the current one, declined to grant leave to Appeal as the Applicant had not demonstrated prima facie ground as required by the law.

### **Issue**

[14] Whether the Court be pleased to grant the applicant leave to appeal to the Court of Appeal against the Judgment of the High Court.

### **Analysis**

#### *Right of appeal under the Law of Succession Act*

[15] The Law of Succession Act (Cap. 160) does not confer an automatic right of appeal to the Court of Appeal from decisions of the High Court where the High Court exercises original jurisdiction in probate and administration matters.

[16] This position is well illustrated in a long line of authorities since ***Rhoda Wairimu Karanja & Another v Mary Wangui Karanja & Another*** [2014] eKLR, where the Court of Appeal held:

*i. “Under the Law of Succession Act, there is no express automatic right of appeal to the Court of Appeal. An appeal will lie from the decision of the High Court exercising original jurisdiction only with leave of the High Court or, where leave is refused, with leave of this Court.”*

[17] In ***Eliud Mwendia Wandu v Jane Muthoni Muchira*** [2021] KECA 1016 (KLR), where the Court of Appeal struck out an appeal for failure to obtain leave, reiterating that leave is a jurisdictional prerequisite.

[18] An Applicant must satisfy this Court that the intended appeal raises arguable or prima facie triable issues deserving the consideration of the appellate court.

***Whether the application was made without undue delay***

[19] The Judgment was delivered on 8<sup>th</sup> April 2025, and the application for leave was filed on 2<sup>nd</sup> May 2025, approximately 24 days later.

[20] Considering that the filing of an appeal under Rule 75 of the Court of Appeal Rules must be preceded by a Notice of Appeal filed within 14 days (which was done here), this delay is not inordinate. The Applicant acted within a reasonable timeline.

***Whether the intended appeal raises arguable case***

[21] Leave to appeal will normally be granted where, 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 jurisdiction of the court in relation to land ownership and fraud among others. Such grounds will be determined by the Court of Appeal, and significantly, an arguable appeal does mean one that must succeed at the hearing.

[22] Where a party promptly seeks leave and demonstrates arguable grounds, the interests of justice are best served by allowing the Court of Appeal to settle the issues definitively. Denying leave would foreclose the Applicant's access to appellate review a right to fair hearing analogous to the right to fair trial recognized under Article 50 (2) of the Constitution.

**ORDERS**

[23] Accordingly, for the reasons set out above, the Application for leave to appeal is allowed as prayed.

[24] Costs in the Cause.

*Order accordingly.*

**DATED AND DELIVERED THIS 27<sup>TH</sup> DAY OF NOVEMBER 2025.**

**EDWARD M. MURIITHI**

**JUDGE**

**APPEARANCES:**

Ms. Muturi for the Appellant.

Ms. Nyaga for the Mr. J. Kathungu for the Respondent.