

**IN THE COURT OF  
APPEAL AT  
ELDORET**

**(CORAM: WARSAME, MATIVO & GACHOKA,  
JJ.A.) CIVIL APPLICATION NO. E005 OF  
2025**

**BETWEEN**

**RURAL HOUSING ESTATES.....APPLICANT**

**AND**

**SOPHIA CHEROTICH SISIWA.....1<sup>ST</sup> RESPONDENT**  
**HASSAN KIPKORIR SISIWA.....2<sup>ND</sup> RESPONDENT**  
**SALIM KIPTOO SISIWA.....3<sup>RD</sup> RESPONDENT**  
**MUSA KIPK.EMBOI KITUR.....4<sup>TH</sup> RESPONDENT**

*(An application for injunction from the ruling and order of  
the High Court at Eldoret (R. Nyakundi, J.) delivered on 15<sup>th</sup>  
November 2024*

*in*

**HCSC No. 167 of**

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**RULING OF THE COURT**

1. By Notice of Motion dated 13<sup>th</sup> January 2025, the applicant has invoked Articles 50, 159 (2) (d) and 164 of the Constitution of Kenya 2010, section 3 and 3A of the Appellate Jurisdictions Act as well as Rules 5 (2) (b), 44, 45 and 49 of the Court Appeal Rules 2022 seeking the following reliefs:

- 1. ... Spent;**
- 2. ...Spent;**
- 3. ...Spent;**

***4. THAT the Honorable court be pleased to issue orders of injunction barring, preventing and prohibiting the***

***respondents from assuming administratorship over the said parcel of land, dealing, purporting to own and/or distributing land parcels LR. 776/4/1, LR. 776/4/2, LR 773/1 and LR 775/1 vide the amended certificate of confirmation of grant issued in Eldoret High Court Succession cause No 167 of 1998 pending the hearing and determination of the intended appeal;***

***5. THAT the cost of the application be provided for.***

2. The application is hinged on the grounds on its face together with the supporting affidavit and further affidavit of Shrikesh Gheewala sworn on 13<sup>th</sup> January 2025 and 5<sup>th</sup> February 2025 respectively. The gist of the Motion is the trial court erred in arriving at the decision it made thereby raising arguable grounds of appeal. On the nugatory aspect, the applicant stated that it stood to suffer substantial loss if the respondents, the administrators of the deceased's estate, are allowed to continue with distribution of the land parcels in contention. As a result, the applicant's proprietary interests would be diluted. The applicant, in a further affidavit sworn on 5<sup>th</sup> February 2025 stated that it had sought leave to appeal against the trial court, but the application was pending hearing. However, it was orally submitted in answer to a question by the Court that leave was

granted on 13<sup>th</sup> June 2025.

3. The 2<sup>nd</sup> respondent filed an affidavit that he swore on 28<sup>th</sup> January 2025. It is indicated to be filed on his own behalf and on behalf of his co-respondents. The respondent cited that no reasons had been advanced by the applicant to warrant the issuance of the orders sought. Cardinaly, the 2<sup>nd</sup> respondent pointed out a jurisdictional issue: no leave was sought by the applicant to appeal against the decision of the trial court.
4. It is common ground that this dispute arises from a succession dispute namely Eldoret High Court **Succession Cause No. 167 of 1998; In the matter of estate of the late Maiakwen Sisiwa (deceased)**. During the hearing of the application on 24<sup>th</sup> November 2025, Mr. Ogutu represented the applicant while Miss Ngala represented the respondent. In her submissions, Miss Ngala regurgitated the question whether the applicant sought leave to appeal. The question was put to Mr. Oguto who indicated from the bar, that leave to appeal was granted on 13<sup>th</sup> June 2025. However, save for the above submissions, this Court notes that no evidence to that effect was adduced.
5. Having, considered the submissions of the parties and the merits

of the application, we will first determine the question of leave  
as this

goes to the root of the application. In the case of **Mughal & Rashid (Suing as the legal representatives of the Estate of the Late Rashid Mughal) & another vs. Bhola** [2025] KECA 420 (KLR), this Court held as follows on leave to appeal against a decision arising from a succession dispute:

***“...The question that falls for determination is whether an appeal can lie where the law does not expressly provide for it. In our considered opinion, for this Court to properly entertain an appeal from the High Court, as the above section suggests, the appeal must lie to this Court under any written law. In other words, unless a right of appeal is clearly and expressly provided by a statute, it does not exist. This is because a right of appeal infers in no one, that is, it cannot be assumed, and therefore an appeal for its maintainability must have the clear authority of law. That is the entry point that grants this Court jurisdiction to adjudicate on the matter. If the statute does not create any right of appeal, no appeal can be sustained by this Court. It is a prerequisite for invoking the jurisdiction of this Court.***

***22. It is important to underscore the requirement that an appeal must lie under any law is a jurisdictional prerequisite for this Court to be properly seized of the matter. Although this Court has the inherent power to protect and regulate its own process, that does not extend to the assumption of jurisdiction not conferred upon it by the Constitution or the statute. If the Constitution or a statute does not provide for such a right that is the end of the matter and this Court cannot assume the power. In addition to the***

***constitutional and statutory requirement that the appeal be provided under the law, there is yet another twofold requirement: first, the existence of a decision***

***of the High court; and, second, where leave to appeal is required, it has been sought and obtained in the first instance, and if leave to appeal has been refused, it is applied and granted by this Court. It is important to stress that the right to appeal to this Court is neither automatic, nor absolute. This is because an appeal must lie to this Court under any law and where leave is a prerequisite, it must be sought and obtained. As Brand JA said in Newlands Surgical Clinic (Pty) Ltd vs. Peninsula Eye Clinic (Pty) Ltd 2015 (4) SA 34 SCA; [2015] 2 All SA 322 (SCA) para 13: "Leave to appeal . . . constitutes what has become known, particularly in administrative law parlance, as a jurisdictional fact. Without the required leave, this court simply has no jurisdiction to entertain the dispute."***

6. Having considered the submissions, we find that there is no evidence placed before the Court to demonstrate that leave was sought and granted before the trial court. Jurisdiction cannot be invoked by assumption or conjectures as the applicant is inviting this Court. Withal, as an advocate representing the interest of his client, the applicant, Mr. Ogutu cannot give evidence on behalf of his client on the basis of submissions from the bar. Such assertions are not only unprocedural but also lack probative value as they were based on evidentiary issues. The applicant ought to have attached affidavit evidence in support of that contention.

7. Accordingly, in the absence of evidence that leave to appeal before the trial court was obtained, the Notice of Motion dated 13<sup>th</sup> January

2025 is incompetent. It is hereby struck out with costs to the respondents.

**Dated and delivered at Eldoret this 28<sup>th</sup> day of November 2025.**

**M. WARSAME**

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**JUDGE OF APPEAL**

**J. MATIVO**

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**JUDGE OF APPEAL**

**M. GACHOKA C. Arb, FCI Arb.**

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**JUDGE OF APPEAL**

*I certify that this is a  
True copy of the original  
Signed*

**DEPUTY REGISTRAR**