



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

MISC. CIVIL CASE NO. E027 OF 2025

STEPHEN

MUTHIKE

MITAMBO.....APPLICANT

VERSUS

MARGARET WANJIKU CHOMBA.....RESPONDENT

RULING

[1] By a Notice of Motion dated 1/3/2025, the applicant seeks an extension of time to file an appeal and ancillary relief of injunction pending appeal as follows:

“1. THAT this Honourable Court be pleased to grant leave to the Applicant herein to file appeal in the High Court against Judgement of Kerugoya Magistrate Court Succession Cause I o. E005 0[2020 dated 14th December, 2022 out of time.

2. THAT this Honourable Court pleased to issue a restraining Order against the Respondent, either by herself, her agents/servants, or anyone acting through her from any interfering with, alienating or in any other way wasting or converting any land title deeds arising from Land Parcel

INOI/KIAGA/197 the estate of the deceased Mitambo Kago alias Mitambo Kago until further orders of this Court.

[2] The grounds on which the application is brought are set out as follows:

“1. That a claim filed by one Maganjo Joshua Kago in Kerugoya MCELC E129 of 2024 against the Joseph Munene Gitahi and others for a portion of land parcel L.R. INOI/KIAGA/197 or refund money which he assisted them to file succession cause, was screened by the Court for mediation.

That upon mediation the Plaintiff and Defendants agreed in a mediation settlement agreement that Defendants shall seek to file appeal against Judgement by which they had been aggrieved in Kerugoya C.M. Succession Cause. No. E005 of 2020 without any delay.

3. That the said mediation settlement agreement is hereby attached.

4. That in the interest of justice and harmony in the families this Honourable Court ought to grant the enlargement of time to file appeal to allow justice and peace to take its course.

5 That its fair and just that the applicant be granted his request in the interest of Justice.”

[3] The application was supported by a supporting affidavit sworn by the applicant on 1/3/2025 to which, when responded to, he added a supplementary Affidavit of 15/7/2025.

[4] The Respondent’s replying Affidavit of 26/6/2025 objecting that the execution of the Confirmed Grant in the Succession Case had long been completed and she attached

Mutation Form and Consent to partition of Land INOI/KIAGA/197 and certificates of Search indicating that 2 portions created from the subdivision on succession were registered in the name of the applicant who had also signed the consent to partition. The respondent contended that the application for leave to appeal was an afterthought after the applicant had been sued by third parties for a portion of land in the suit pending before the ELC Kerugoya CM Court No. E129 of 2024.

[5] By his Supplementary Affidavit, the applicant responds that the Mutation and the Consent to Partition were not signed by him and are forgeries. He agrees that the succession cause whose judgment he seeks to appeal “*was concluded in 2022 but deny that I participated fully in every step of the way as the same was concealed from me.*”

[6] The Court has considered the application and the affidavits in support and in opposition, and finds the application without merit for several reasons.

[7] An issue of alleged forgery being an offence must be proved by cogent evidence and the applicant’s casual mention of forgery does not suffice.

[8] There are 12 other persons who are named in the Mutation dated 4/8/2024 who have not been joined in the suit and who are affected by any order for injunction affecting their parcels of land by subdivision of Parcel NO. INOI/KIAGA/197, and each of these are registered proprietors as shown on the certificates of search have proprietary rights to their portions, which cannot be taken away without being heard.

[9] Indeed, the reference in the prayer no. 2 for an injunction against interfering with **any land title deeds arising from Land Parcel INOI/KIAGA/197** is clear indication that the applicant is aware that the parcel of land does not exist any more upon subdivision yet he has not joined the beneficiaries who have inherited the parcels and acquired proprietary rights in them.

[10] Following the subdivision, the parcel of land No. INOI/KIAGA/197 ceased to exist and the application for injunction in terms of Prayer No. 2 of the Notice of Motion dated 1/3/2025 is misconceived.

[11] On a balance of probabilities, the Court accepts as urged by the Respondent that the applicant was aware of the succession proceedings before the trial court, and that he fully participated in them upto the final distribution of the estate by consent to partition and the mutation forms. The applicant accepts to have been aware of the succession proceedings and that they were concluded in 2022 and he cannot therefore be heard to deny knowledge of the distribution of the estate asset and giving his consent for the partition.

[12] In addition, no satisfactory explanation is given for the delay in appealing the judgment which concluded the case in 2022, save the bare allegation that ***“I was aggrieved by the Judgment/Ruling of the magistrate’s Court and before I acted I became sick.”*** There was no evidence of the alleged illness, and it is clear that the pursuit for leave to appeal was provoked by the filing of the ELC suit against him.

[13] The Court finds no merit in the application for leave to appeal from the decision of the trial court out of time, and the application dated 1/3/2025 is declined.

ORDERS

[14] Accordingly, for the reasons set out above, the Applicant’s application dated 1/3/2025 is dismissed.

[15] There shall be no order as to costs.

Order accordingly.

DATED AND DELIVERED THIS 4TH DAY OF DECEMBER 2025.

EDWARD M. MURIITHI

JUDGE

APPEARANCES:

The Applicant in person.

Mr. Kamuga Mburu for the Respondent.