



Kariuki v Kariuki & 3 others (Probate & Administration Appeal E012 of 2024) [2025] KEHC 18628 (KLR) (16 December 2025) (Ruling)

Neutral citation: [2025] KEHC 18628 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
PROBATE & ADMINISTRATION APPEAL E012 OF 2024**

TW OUYA, J

DECEMBER 16, 2025

BETWEEN

PETER CHEGE KARIUKI APPLICANT

AND

EDWARD WARUI KARIUKI 1ST RESPONDENT

JOSEPH NJOROGE KARIUKI 2ND RESPONDENT

HENRY MURIGI KARIUKI 3RD RESPONDENT

ESTHER WAITHERERO 4TH RESPONDENT

RULING

1. The Respondents have filed a Notice of Preliminary Objection dated 15th July 2024 seeking for the dismissal of the Applicant/Intended Appellant’s Chamber Summons Application dated 25th June 2025 and Memorandum of Appeal dated 4th June 2024 on the following grounds that the Memorandum of Appeal was filed on 4th June 2024 more than 30 days from the date of Ruling dated 8th February 2024 while there is no corresponding leave to appeal out of time; that the prayers sought can only be granted by an ELC Court and not this Court; and that the subject matter of this application namely LOC.18/Marumi/141 does not exist as the land has been sub-divided and several resultant titles have already been issued by the Land Registrar Murang’a. It is also stated that the appellant has filed and ELC suit at Kigumo Law Courts seeking similar relief.
2. The Preliminary Objection was dispensed by way of written submission upon concurrence by the parties. The Respondents/Applicants submitted that the reliefs sought for in the Intended Appellant’s Chamber Summons Application dated 25th June 2025 have been overtaken by events as execution of the decree of the trial Court took effect. Further to the above it was submitted that the Application dated 25th June 2025 amounts to an abuse of the due process of the Court as the Intended Applicant



also filed a separate suit being KIGUMO ELC No. E040 of 2023 concerning the issues raised in these proceedings.

3. The Respondents relied on the holding in *Jaber Mohsin Ali & another v Priscillah Boit & another* (2014) eKLR and Order 42 Rule 6(6) of the Civil Procedure Rules as applied by the Court in *Selestica Ltd v Gold Rock Development Ltd* [2015] eKLR and urged the Court to dismiss the subject Application on account of failure to seek leave to appeal out of time.
4. The Respondents contend that the Intended Appellant did not adhere to the provisions of Section 76 of the *Law of Succession Act*, which requires him to first, procure a decision from the Environment and Land Court entitling him to a portion of the Estate being LOC.18/MARUMI/141 (the subject property), before approaching this court which he did not do.
5. The Respondents also take issue with what is referred to as “the physical mode of distribution” of the suit property. He takes the position that the Respondents colluded with a private surveyor of their choice and excluded him for the sub-division process relating to the suit land. It was further argued that, in the interests of justice and fairness, parties herein ought to be allowed by this Court to occupy and assume ownership of their respective portions of the suit property wherein they have established dwellings, structures and farms, as distinguished from elsewhere on the subject property.
6. The Respondents submit that this Court is empowered under Section 47 of the *Law of Succession Act* and Section 73 of the Probate and Administration Act to grant the reliefs craved in the Intended Appellant’s Application dated 25th June 2025. He urged the Court to consider the fact that the Intended Appeal does not challenge the trial Court’s substantive Order as regards distribution of the Estate in question but pertains only to “placement on the ground” on the suit property which is in the nature of a secondary Order flowing from the decree issued by the trial Court.
7. In the Chamber Summons Application dated 25th June 2025 and Memorandum of Appeal dated 4th June 2024 forming the subject of the current proceedings, the Applicant/Intended Appellant seeks for reliefs as against the Respondents for an Order of stay, to stay execution of the certificate of confirmation and in particular the forced relocation and the demolishing of the Applicant’s home from the portion he does occupy, utilize, possess and has built in land parcel number LOC.18/MARUMI/141 firstly pending the hearing and determination of this application and thereafter pending the hearing and final disposal of the appeal herein; an Order [of] maintenance of status quo as to mode of occupation, user and cultivation long standing and as current pending the hearing and disposal of the appeal herein: lastly, any further Orders or directions as may be necessary in the protection of justice and costs herein to [a]bide the substantive appeal.
8. The Application is premised on the grounds enumerated at the foot thereof and the Affidavit sworn by the Applicant/Intended Appellant on 25th June 2025. A Memorandum of Appeal dated 4th June 2024 challenging the decision entered by the Chief Magistrate’s Court at Kigumo on 8th February 2024 in Succession Cause Number 61 of 2003 was filed alongside with the instant Application.
9. The Intended Appellant deposed that his father sometimes in 1970 physically sub-divided and allocated designated portions of the suit property to each of the parties herein being his children; who, in the intervening period occupied and developed their respective parcels as allocated by their father. That the trial Court disregarded the existing sub-division of the property in question. Further, the effect of the impugned decision is to relocate the Intended Appellant from the section wherein he has erected houses and other structures. That he is of advanced age, being around 80 years old, sickly and under threat from the Respondents to relocate to a different section of the suit land not under his occupation. He enclosed a letter dated 6th April 2023 issued by the Officer-Commanding-Station at



- Kigumo requiring the Intended Appellant to remove his houses and structures from the portion of the subject property which he has been occupying, failure to which those houses and structures will be demolished as from 5th July 2024.
10. Having contextualized the Notice of Preliminary Objection before the Court in the preceding background, I find that the issue for determination is whether the instant Preliminary Objection is merited.
 11. A Preliminary Objection was defined in the case of Mukisa Biscuit Manufacturing Co. Ltd Vs Westend Distributors Ltd [1969] E.A. 696 as follows: `

“...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.”
 12. The Respondents raised two jurisdictional questions namely, that the Intended Appellant failed to seek and obtain this Court’s leave to appeal out of time against the trial Court’s holding rendered on February 2024 and that other that the reliefs sought in the Application dated 25th June 2025 can only issue from the Environment and Land Court, as distinguished from this Court.
 13. It was also argued and submitted that the Memorandum of Appeal filed out of the statutory period and without leave of the court on 4th June 2024 while the impugned decision was entered on 8th February 2024 which is far in excess of the for mounting an appeal.
 14. The relevant provision stipulating the period within which to file appeals from the Lower court is Section 79G of the *Civil Procedure Act* provides that:

“Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order:

Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.”
 15. The Court in the case of Josephine Wambui Mwangi v Michael Mukundi Ngugi [2021] eKLR, declared as follows:

“No attempt was made to have the appeal admitted out of time. In the circumstances, the court cannot condemn the respondent to respond to an appeal that has been filed in blatant disregard of the law and no attempt has been made to regularize the defect. The net result is that the court agrees with the respondent that this appeal stands to be struck out on the ground that it was filed more than one year outside the stipulated time and without an order enlarging time for bringing the appeal.”
 16. It is apparent that in filing the Memorandum of Appeal dated 4th June 2025 and Application dated 25th June 2025, that Intended Appellant failed to seek leave of the court to file appeal out of time. He also failed to provide reasons for the delay. If he did so and provided cogent or good reasons such leave would not have been denied. Furthermore, the Court is alive to the fact that the Intended Applicant also failed to attempt to satisfy the other conditions for the grant of stay of execution pending appeal.



The question of substantial loss which the Intended Appellant stood to suffer in the event the trial Court's decree was not stayed; and, the issue of security for the performance of the trial Court's decree were not adverted to by the Intended Appellant.

17. This Court is persuaded in the circumstances that it lacks jurisdiction to entertain the Applicant's Memorandum of Appeal dated 4th June 2024 as same was filed out of the statutory period without leave of the Court. The aforesaid same is therefore a nullity in law and incapable of anchoring the Application dated 25th June 2025.
18. Resultantly, this court finds as follows:
 - i. The Respondents' Notice of Preliminary Objection dated 15th July 2024 to be merited and is hereby allowed.
 - ii. The applicant's Memorandum of Appeal dated 4th June 2024 and Application dated 25th June 2025 are hereby dismissed.
 - iii. The Court directs each party to bear own costs.

DATED, SIGNED AND DELIVERED ELECTRONICALLY THIS 16TH DAY OF DECEMBER, 2025.

HON. T. W. Ouya

JUDGE

