



In re Estate of the Late Sowe arap Chumo (Deceased) (Succession Cause 267 of 2004) [2025] KEHC 19020 (KLR) (3 December 2025) (Ruling)

Neutral citation: [2025] KEHC 19020 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 267 OF 2004
JK SERGON, J
DECEMBER 3, 2025**

BETWEEN

DAVID CHERUIYOT NGENO APPLICANT

AND

WILLIAM C NGENO RESPONDENT

RULING

1. The subject matter of this ruling is the motion dated 28th July, 2025 whereof the applicant sought for the following Orders:-
 - i. This Application be certified as urgent and service of the same be dispensed with in the first instance.
 - ii. There be a temporary Stay of Execution of the Judgment and Orders issued on 17th July, 2025 pending the hearing and determination of this application interparties.
 - iii. There be orders of Stay of the Orders issued on 17th July, 2025 and any proceedings in this matter pending hearing and determination of this Application.
 - iv. There be Orders be Stay of the Orders issued on 17th July, 2025 and any proceedings in this matter pending hearing and determination of this Appeal.
 - v. That this Honourable Court be pleased to grant leave to the applicant to file Appeal against the Judgment of this Court dated 17th July, 2025.
 - vi. Costs be in the cause.
2. David Cheruiyot Ngeno, the applicant herein, filed the Affidavit he swore in support of the motion.



3. William C. Ngeno, the Respondent herein filed an Affidavit in reply he swore to oppose the motion. Parties directed to file written submissions to dispose of the application. At the time of writing this ruling, the Applicant and the Respondent had filed their submissions.
4. I have considered the grounds stated on the motion and the facts deponed in rival Affidavits.
5. I have further considered the rival submissions. It is the submission of the Applicant that unless an order for Stay is granted, the Applicant stands to lose about 5 Acres, estimated to be about KShs.15,000,000/= which is a substantial amount.
6. The Respondent opposed the motion arguing that the Applicant has not filed any Notice of Appeal as alleged therefore there is no basis of the application. The Respondent further argued that in the absence of a Notice of appeal, this Court has no power to grant leave to Appeal. He also argued that an Appeal is of right to the Applicant, therefore he does not need to seek for leave.
7. I have carefully perused the Affidavit in reply sworn by the Respondent and it is apparent that he did not raised the issue touching on the filing of a Notice of Appeal. He did not also state that the Applicant has a right of Appeal. What the Respondent has done is to raise the aforesaid issues in his written submissions. The Applicant therefore had no opportunity to respond.
8. The question as to whether the Applicant has an automatic right of Appeal is a vexing question which the Court of Appeal has address. A party has no automatic right of Appeal against the decision of the High Court made in exercise of its original jurisdiction. A party must first seek for leave to Appeal to Court of Appeal. It is therefore not correct that the applicant has a right of appeal.
9. Had the Respondent raise the issue touching on the filing of a Notice of appeal in the Replying Affidavit, perhaps the Applicant would have sought to file a Further Affidavit to show he filed.
10. This Court will give him the benefit of doubt and accept that indeed he filed the Notice of Appeal.
11. The question to be answered here is whether the Applicant is entitled to the order for stay and whether he should be granted leave to Appeal to the Court of appeal.
12. On the first prayer, the Applicant has stated that he would suffer substantial loss if the order for stay is not granted the Certificate of Confirmation of Grant would be implemented and the Applicant may lose 5 Acres of Land.
13. In my view the loss is evidence of substantial loss. I have already alluded that the Applicant has no automatic right of Appeal, therefore he must seek for leave to appeal. I am satisfied the Applicant is entitled to be granted leave.
14. In the end, the motion dated 28th July, 2025 is found to be meritorious. The same is allowed giving rise to issuance of the following Orders:-
 - i. Leave is granted to Applicant to appeal against the Judgment of this Court delivered on 17/7/2025.
 - ii. An order for Stay of Execution of the Judgment of this Court delivered on 17/7/2025 pending the hearing and determination of the intended Appeal is granted.
 - iii. Each party to bear their own costs.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 3RD DAY OF DECEMBER, 2025.

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J. K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

No Appearance

