



REPUBLIC OF KENYA



KENYA LAW
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**Njeru v Njeru (Civil Appeal E037 of 2023)
[2025] KEHC 18937 (KLR) (11 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18937 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CIVIL APPEAL E037 OF 2023
EM MURIITHI, J
DECEMBER 11, 2025**

BETWEEN

PERIS MUTHONI NJERU APPLICANT

AND

LUKE MUCHOKI NJERU RESPONDENT

RULING

1. The Respondent/applicant filed Summons dated 17th September, 2025 seeking the following orders:
 1. Spent.
 2. Spent.
 3. That the honorable court do stay the judgement and/or orders granted by this court on 24th July, 2025 pending the hearing and determination of the intended appeal.
 4. Spent.
 5. That the honorable court do issue a temporary injunction restraining the respondent by herself, her agents and/or servants from transferring, selling, disposing, encroaching and/or interfering with the applicant's right in respect to title number Inoi/Kamondo/1569 pending the hearing and determination of the intended appeal.
 6. Spent.
 7. That the honorable court do order that the status quo be maintained in regard to title number Inoi/Kamondo/1569, that is; the applicant and the respondent continues to occupy and preserve title number Inoi/Kamondo/1569 until the hearing and determination of the intended appeal.
 8. Spent.



9. That the honorable court do place an inhibition in regard to tittle number Inoi/Kamondo/1569 until the hearing and determination of the intended appeal.
 10. That the honorable court do grant the applicant leave to appeal to the Court of Appeal against the judgement, orders and/or decree Issued by Justice Edward M. Muriithi in High Court Civil Appeal No. E037 of 2023, Kerugoya on 24th July, 2025.
 11. That the costs do abide the outcome of 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 on 26th April, 2026 Hon. Grace Kirugumi entered judgment against the respondent in Chief Magistrate Succession Cause No. 464 of 2016 Kerugoya. Having been aggrieved and dissatisfied by the aforesaid judgement the respondent appealed vide High Court Civil Appeal No. E037 of 2023 - Kerugoya. That judgement on the aforesaid was delivered by this Court on 24th July, 2025 wherein the respondent's claim succeeded.
 3. The applicant avers that if this judgement is executed she will suffer substantial loss as she has heavily invested by planting of various crops which she has maintained over the years. She is ready to abide with conditions as shall be spelt out by this court including furnishing security thereon in regard to granting of stay in case of appeal. That an order for maintenance for status quo, temporary injunction and/or inhibition would preserve the suit land until the hearing and determination of the intended appeal.
 4. Lastly, the applicant is seeking leave to appeal to the Court of Appeal the judgement of this court as rendered on 24th April, 2016 hence this application.
 5. The respondent deposed to a Replying Affidavit and avers that as correctly stated in paragraph 4 of the supporting affidavit, judgment was delivered by this court on 24th July, 2025 in the presence of counsel for the applicant herein. That in accordance with Rule 75 of the Court of Appeal Rules, any person who desires to appeal to the Court of Appeal must lodge the Notice of Appeal within fourteen days of the date of the decision against which it is desired to appeal.
 6. Further, the respondent avers that under Rule 39 of the Court of Appeal Rules, an application for leave to appeal has to be filed within fourteen days of the decision against which it is desired to appeal, in instances where leave to appeal is a requirement.
 7. Lastly, the respondent avers that from the supporting affidavit of the applicant, it's clear that the applicant did not file the Notice of Appeal or an application for leave to appeal within time. There is therefore nothing upon which the orders sought can be granted. An application for extension of time can only be filed in the Court of Appeal, pursuant to Rule 4 of the Court of Appeal Rules.

Applicant submissions

8. The question of whether leave to appeal should be granted in succession matters has generated jurisprudential consideration. Section 50 of the *Law of Succession Act* provides as follows:

Appeal shall lie to the High Court in respect of any order or decree made by a resident magistrate in respect of any estate and the decision of the High Court thereon shall be final.



In *John Mwita Murimi & 2 Others v. Mwikabe Chacha Mwita & Another* (2019] eKLR, the Court of Appeal re-affirmed this position by holding as follows:

“...Under the *Law of Succession Act* there is no express automatic right of Appeal 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...”

On stay of execution

9. On the question of stay of execution this court draws its powers from Section 47 and 73 of the Probate and Administrative Rules in order to meet the ends of justice. However, the governing provision on stay of execution is Order 42 Rule 6 (2) of the Civil Procedure Rules.
10. The judgment and decree made on 24th July, 2025 has not been executed. The execution will create the state of affairs that will irreparably affect or negate the very essential core of the applicant as the successful party in the 2nd intended appeal, substantial loss is what is sought to be prevented, a stay must be granted so that the appeal may not be rendered nugatory should the Court of Appeal reverse the judgment herein. That from her affidavit, the applicant is ready to abide with conditions as shall be spelt out by this court including furnishing security.
11. The applicant submits that substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory. Justice Edward M. Muriithi stated as follows in the present case wherein judgment delivered on 24th July, 2025:

“Appellant’s occupation of 1 ½ of the estate property is a material fact which cannot be disregarded. While such occupation may not, in itself amount to gift inter vivos, it nonetheless bears some legal significance...”

12. This court has powers under Section 47 of the *Law of Succession Act* to make an order of preservation of title number Inoi/Kamondo/1569 through maintenance of the status quo until the hearing and determination of the intended appeal as sought in prayer 7 of the Summons dated 17th September, 2025.

Respondent submissions

13. The Judgment was delivered on 24th July 2025 while the application was filed on 17th September, 2025. Clearly there was a delay of up to 55 days from when the judgment was delivered. The applicant has not given any satisfactory reason for the delay. Neither has the applicant attached any evidence to show the reason for the delay. An application for extension of time can only be filed in the Court of Appeal pursuant to Rule 4 of the Court of Appeal Rules which states that –

“The court may, on such terms as it thinks just, by order extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.”

14. Having violated the clear terms of Rules 39 and 75 of the Court of Appeal Rules, and there being no application fled for extension of time to file the Notice of Appeal and application for leave to appeal, this court has no jurisdiction to grant prayer number 10 of the application, Equally, there are no basis



for granting prayers 3, 4, 5, 6, 7, 8 and 9 of the application, as no Notice of Appeal, the indicator of an intended appeal, has ever been filed yet 14 days from the date of judgment lapsed long time ago.

Issue

15. Whether leave to appeal to the Court of Appeal and the consequential reliefs should be granted.

Analysis

16. Under Section 50 of the *Law of Succession Act*, Cap 160, appeals from subordinate courts lie to the High Court and the decision of the High Court is final, except where leave is granted for a second appeal to the Court of Appeal.
17. The legal principle was articulated and reiterated in the authority cited by the applicant John Mwita Murimi & 2 others v Mwikabe Chacha Mwita & Another [2019] eKLR, that there is no automatic right of appeal to the Court of Appeal in succession matters; such appeal only lies with leave.
18. Judgment was delivered on 24th July 2025, while this application was filed on 17th September 2025, a delay of approximately 55 days. No sufficient explanation has been provided for the delay nor has a Notice of Appeal been filed. This raises a jurisdictional question on whether there is an appeal properly before this Court to anchor the prayers for reliefs sought.
19. The respondent submits that an application for extension of time can only be filed in the Court of Appeal pursuant to Rule 4 of the Court of Appeal Rules which states that

“The court may, on such terms as it thinks just, by order extend the time limited by these Rules, or by any decision of the Court or of a superior court, for the doing of any act authorized or required by these Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.”
20. The applicant avers that if this judgment is executed she will suffer substantial loss as she has heavily invested by planting of various crops which she has maintained over the years.
21. Even considering the nature of succession disputes involving family land and taking into account Sections 47 & 73 of the Probate and Administration Rules, where the Court retains discretion to issue preservation orders while balancing parties' interests, in the absence of a valid appeal, the proper recourse for the Applicant now lies under Rule 4 of the Court of Appeal Rules, where enlargement of time may be sought before that Court.
22. The Court considers that leave to appeal need not be preceded by the filing of a Notice of Appeal or extension of time to file the Notice of Appeal. Once the Court considers that there is a serious question for consideration by the Court of Appeal this Court may grant leave to appeal, and it is upon the applicant to obtain an extension of time to file the appeal from the Court of Appeal in terms of Rule 4 of the Court of Appeal Rules.
23. The Court considers that there is a serious issue for consideration by the Court of Appeal as to the entitlement of the Appellant to the disputed 1 ½ acre portion of the estate property and the deceased's direction as to the equal distribution of his estate between his two houses, and consequently will grant leave to appeal.



Orders

24. Accordingly, for the reasons set out above, the Court makes the following orders:

1. The respondent/applicant has leave of court to appeal the decision of this Court.
2. The application for extension of time to file the appeal may only be granted by the Court of Appeal under Rule 4 of the Court of Appeal Rules.

25. There shall be no orders as to costs in the family succession matter.

Order accordingly.

DATED AND DELIVERED THIS 11TH DAY OF DECEMBER 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Nyaga for Mr. Kagio for the Appellant.

Mr. Ngigi for the Respondent/Applicant.

