

**IN THE COURT OF APPEAL  
AT NYERI**

**(CORAM: MUMBI NGUGI,  
J.A)**

**CIVIL (APPEAL) APPLICATION NO. E109 OF**

**2025 BETWEEN**

**MARTIN KINOTI MUNGANIA ..... 1<sup>ST</sup>  
APPLICANT**

**SILAS KAIMENYI ..... 2<sup>ND</sup>**

**APPLICANT AND**

**JOSEPH KITHINJI GITONGA.....RESPONDENT**

*(Being an application for extension of time within which to lodge a notice of appeal against the ruling of the High Court in Meru (Muriithi J.) dated 30.10 2024*

*in*

**SUCCESSION CAUSE NO. 12 OF 2019)**

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**RULING**

1. In the application dated 30<sup>th</sup> June 2025, the applicants seek extension of time to issue a notice of appeal from the ruling of the High Court dated 3<sup>rd</sup> October 2024. They also pray for an order on costs.
2. The application is supported by an affidavit sworn by the 1<sup>st</sup> applicant, Martin Kinoti Mungania, the 1<sup>st</sup> applicant, sworn on 30<sup>th</sup> June 2025. The applicants state in the grounds in support of their application that the time for

filing the notice

of appeal lapsed while they were waiting for the trial court  
to

grant them leave to appeal under section 50 of the Law of Succession Act, and that the court delivered its ruling on 11<sup>th</sup> June 2025.

3. In the affidavit in support of the application, the 1<sup>st</sup> applicant avers that they were dissatisfied with the ruling delivered on 30<sup>th</sup> October 2024 and intended to appeal, required leave to appeal, but that their application for leave was rejected. He further avers that they are still dissatisfied as they were condemned to pay rent for premises they did not lease; that time for filing the appeal expired while they awaited the outcome of the leave application; and that unless the application is granted they *“stand to loose our right to defence ourselves and as such we stand to suffer irreparable loss and damage if we loose the right to appeal herein.”*
4. The respondent opposes the application by an affidavit which he swore on 3<sup>rd</sup> October 2025. He avers that the present application application is incompetent, a non-starter and an abuse of the Court process; that leave to appeal against the ruling of 3<sup>rd</sup> October 2024 was refused on 11<sup>th</sup> June 2025; that under rule 41 of the Court of Appeal Rules, the applicants had 14 days to seek leave from this

# Court after the application

for leave was refusal but did not do so; and that an appeal is not automatic in a succession cause under section 50 of the Law of Succession Act.

5. The respondent further notes that the present application is not for leave but for extension of time to file a notice of appeal; that extension of time cannot be granted where leave has not first been obtained; and that the application is therefore incompetent.
6. It is his averment, further, that even were the present application taken as an application for leave, it was still filed out of time and the delay has not been explained.
7. The parties filed submissions, both dated 3<sup>rd</sup> October 2025. Relying on rule 4 of this Court's Rules, the applicants submit that they have approached the Court seeking extension of time to file a notice of appeal; that the delay in filing the application arose from a *bona fide* belief that leave was required under section 50 of the Law of Succession Act; that their application for leave was dismissed on 11<sup>th</sup> June 2025 after the appeal period had lapsed; that the present application was filed promptly thereafter; and that rule 4 of the Court of Appeal Rules gives the Court unfettered

discretion to extend time. Support for this submission is sought in, among others, the case of **Leo Sila Mutiso v Rose Hellen Wangari Mwangi** [1999] 2 EA 231, and Articles **48** and **50** of the Constitution.

8. In his submissions, the respondent reiterates his averments that the application is incompetent as the applicants have not obtained leave to appeal. He cites the decision in **Rhoda Wairimu Karanja & Another v Mary Wangui Karanja & Another** [2014] eKLR in which the Court held that there is no automatic right of appeal in succession matters; that leave must be obtained, either from the High Court or, if refused, from this Court; that under rule 41, the applicants were required to apply for leave within 14 days; and that their application offends mandatory procedure and should be struck out with costs.
9. I have considered the application, the affidavit in support and opposition thereto, and the submissions of the parties. As is evident from the application, the depositions in support, and the applicants' submissions, they are seeking, exclusively, extension of time under rule 4 of this Court's

Rules to lodge a

notice of appeal from the ruling of the High Court dated 30<sup>th</sup> October 2024.

10. To be entitled to an order of extension of time to file a notice of appeal, the appellants must have a right of appeal to this Court, and as the applicants had recognized when they first sought leave from the High Court, there is no automatic right of appeal from decisions of the High Court to this Court in succession matters. However, as decisions of this Court illustrate, an appeal will lie either with leave of the High Court or, where the High Court declines leave, by leave of this Court- see **Rhoda Wairimu Karanja & another v Mary Wangui Karanja & another** [2014] KECA 255 (KLR). In **Nkoliai v Oloparaki & 2 others** [2023] KECA 1228 (KLR), this Court stated:

***“It is our conclusion that leave to appeal was a pre-requisite in the present appeal. We note that the same was not obtained prior to filing of this appeal. Consequently, this Court lacks the requisite jurisdiction to hear and determine this appeal.”***

11. What the jurisprudence of this Court illustrates is that in order to file an appeal to this Court from the decision of

the

High Court in a succession matter, a party must first obtain leave. If no leave to appeal has been granted, then there is no right to appeal. It follows, therefore, that an application for extension of time to file a notice of appeal when no leave to appeal has been granted is without foundation.

12. The applicants averred that their application for leave to appeal was dismissed on 11<sup>th</sup> June 2025. Instead of applying to this Court under rule 41(1)(b)(ii) for leave to appeal within 14 days of 11<sup>th</sup> June 2025, the applicants seem to have concluded that they did not need leave after all, which would explain their current application for extension of time.
13. While the jurisprudence of this Court is that section 50 of the Law of Succession Act does not preclude all appeals to this Court, the position is that a party must still obtain leave to appeal. It is in the course of obtaining such leave that a party must demonstrate that its intended appeal merits consideration by this Court.
14. That being the case, I find that the present application for extension of time is premature. The applicants must first obtain leave to appeal before they can invoke this Court's

jurisdiction under rule 4.

15. Accordingly, the application dated 30<sup>th</sup> June 2025 is hereby struck out for being premature. The respondent shall have the costs of the application.

**Dated and delivered at Nyeri this 19<sup>th</sup> day of December,  
2025 MUMBI NGUGI**

.....  
**JUDGE OF APPEAL**

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

*Signed*  
**DEPUTY REGISTRAR**

