

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**FAMILY DIVISION**

**MILIMANI LAW COURTS**

**SUCCESSION CAUSE NO. 285 OF 2017**

**IN THE MATTER OF THE ESTATE OF GURNAM SINGH**

**s/o PRITAM SINGH alias GURNAM SINGH GHATAHORA**

**(DECEASED)**

**JOGINDER SINGH BANGRA ..... 1<sup>ST</sup>**

**APPLICANT**

**AMKIR SINGH HEER ..... 2<sup>ND</sup>**

**APPLICANT**

**KIRPAL SINGH ..... 3<sup>RD</sup>**

**APPLICANTS**

**VERSUS**

**AMRIT KAUR GHATAHORA ..... 1<sup>ST</sup>**

**RESPONDENT**

**RULING**

1. Judgment in this matter was delivered on 21<sup>st</sup> September, 2018. The High Court declared the Written Wills presented as invalid and ordered that the deceased's estate be distributed under intestacy laws.
2. Thereafter, a Grant of Letters of Administration intestate was issued on 19<sup>th</sup> February, 2019 to Pardeep Singh Ghatahora and Amrit Kaur Ghatahora following their successful petition. The Grant is pending confirmation.
3. Joginder Singh Bangra, Amkir Singh Heer and Kirpal Singh, aggrieved by the Judgment delivered on 21<sup>st</sup> September, 2018 lodged an appeal to the Court of Appeal at Nairobi, **Civil Appeal No. 391 of 2019**. The appeal was withdrawn on 9<sup>th</sup> July, 2025, as the Appellants conceded that no leave to appeal had been sought.
4. Joginder Singh Bangra, Amkir Singh Heer and Kirpal Singh have presently moved the High Court vide an application dated 10<sup>th</sup> July, 2025 seeking leave to appeal against the Judgment and stay of proceedings for

Confirmation of the Grant pending the hearing and determination of the intended appeal.

5. Pardeep Singh Ghatahora (administrator) is opposed to the application; he filed a replying affidavit dated 18<sup>th</sup> September, 2025.
6. The issues for determination are whether the Applicants should be granted leave to appeal and whether they should be granted a stay of confirmation for the distribution of the estate according to intestacy rules pending the hearing and determination of the intended appeal.
7. There is no automatic right of appeal to the Court of Appeal from a High Court decision in original jurisdiction in succession matters; leave to appeal is required.
8. In **Rhoda Wairimu Karanja & another v Mary Wangui Karanja & another [2014] KECA 255 (KLR)**, the Court of Appeal pronounced itself as follows;

***“We think we have said enough to demonstrate that under the Law of Succession Act, there is no express automatic right of appeal to the Court of Appeal; that an appeal will lie 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. Leave to appeal will normally be granted where prima facie it appears that there are grounds which merit serious judicial consideration. We think this is a good practice that ought to be retained in order to promote finality and expedition in the determination of probate and administration disputes.*

*So, what is our decision in this application? We have found that the application was presented out of time; that the applicant lacked capacity to bring it at the time he did; that leave of the High Court to appeal to this Court in succession matters is necessary in the former's exercise of its original jurisdiction; and that where application for leave has been rejected by the High Court, it can be made to this Court.*

***For the first two reasons, we declare that the application is incompetent and accordingly strike it out with costs.”***

9. The annexures indicate that the applicants took the necessary procedural steps to have **Civil Appeal 391 of 2019** heard before the Court of Appeal. However, they did not obtain the required leave from the High Court to appeal to the Court of Appeal. Consequently, after being given time by the Court of Appeal Bench, the Applicants conceded that no leave had been sought or obtained and subsequently withdrew the appeal.
10. The Judgment that is the subject of the application and intended appeal invalidated two Written Wills – dated 14<sup>th</sup> February, 1986 and 25<sup>th</sup> August, 2016 and directed that the estate be distributed under intestacy rules. Owing to the protracted nature of this succession dispute, it is imperative for the Court to allow parties dissatisfied with the judgment to challenge its validity on Appeal.
11. I thus grant the applicants leave to appeal against the Judgment of 21<sup>st</sup> September, 2018.

12. The Administrators have already lodged an application for the Confirmation of the Grant; therefore, if stay is not granted, the application may be heard, and the estate be distributed. However, the Court cannot issue an open-ended stay, as there are further procedural actions that the Applicants must follow under the Court of Appeal Rules. A temporary stay of 60 days is granted to allow the Applicants to approach the Court of Appeal in accordance with the Court of Appeal Rules.

13. Further directions will be issued once the parties report on the status of the intended appeal on the date to be fixed upon delivery of this ruling.

14. The costs of the application are awarded to the Respondent, Pardeep Singh Ghatahora.

15. It is so ordered.

**DATED, DELIVERED and SIGNED at NAIROBI** through the Microsoft Teams Online Platform on this **16<sup>TH</sup>** day of **FEBRUARY, 2026.**

.....

**C. KENDAGOR**

**JUDGE**

**In the presence of:**

Court Assistant: Beryl

Ms. Shabana, Advocate for Petitioners/Respondent

Ms. Mathii, Advocate holding brief for Miss Wanja, Advocate  
for Applicants in the applications/Respondent