

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MOMBASA**  
**(FAMILY DIVISION)**

**SUCCESSION CAUSE NO 150 OF 1998**

**IN THE MATTER OF THE ESTATE OF RASHID MOHAMED (DECEASED)**  
**MOHAMED RASHID MOHAMED .....APPLICANT**

**VERSUS**

**MOHAMED RASHID MOHAMED & 2 OTHERS.....RESPONDENTS**

**RULING**

1. On 29th January 2026, Mr. Borona, representing the respondent/applicant, made an oral application seeking leave to appeal the court's decision issued on 9th May 2025. He argued that because this case involves succession, leave is required as there is no automatic right to appeal. He submitted that the delay in seeking leave was due to circumstances beyond his control, noting that he was appointed after the impugned ruling was made. He contended that leave would allow the respondent/applicant to pursue an appeal because he was dissatisfied with the court's decision, and asserted that granting leave would not prejudice the applicant.
  
2. Mr Adede, the learned counsel for the applicant, opposed the application. Counsel urged that the reasons given for the delay in seeking leave were not plausible. He averred that there was a pending application before the Court of Appeal seeking similar orders. He accused the respondent/applicant of abusing the court process and prayed that the application be dismissed.

3. I have pursued the record. I note that when the impugned decision of this court was delivered on 9<sup>th</sup> May 2025, no leave to appeal was sought nor was any given. It is trite law, restated in various decisions of the Court of Appeal, such as **Peter Wahome Kimotho v Josephine Mwiyeria Mwanu [2014] KECA 74 (KLR)**, **Rhoda Wairimu Karanja & another v Mary Wangui Karanja & another [2014] KECA 255 (KLR)**, **Joyce Bochere Nyamweya v Jemima Nyaboke Nyamweya & another [2016] KECA 569 (KLR)** and **Machuka & another v Nyangute & another [2025] KECA 538 (KLR)** that there is no automatic right of appeal to the Court of Appeal in respect of the decisions of the High Court. Leave must be sought and granted.

4. In **Machuka & another v Nyangute & another [2025] KECA 538 (KLR)**, it was stated that:

“Therefore, the absence of a provision in the **Law of Succession Act** for appeals originating from the High Court to this Court does not completely exclude such appeals from this Court. In accordance with the general purport of Article 164(3) of the **Constitution**, the Court has jurisdiction to hear such appeals from the High Court. However, the right of appeal in such matters is circumscribed to the extent that it is not an automatic right. There must be leave to appeal given either by the High Court or this Court. In this case, no leave to appeal was sought either from this Court or the High Court. Therefore, the appeal before us is incompetent, as the appellants have not properly invoked the jurisdiction of the Court.”

5. I have considered the matter at length and am persuaded that it will serve the greater interests of justice to grant the orders sought. I see no prejudice to the applicant if the respondent/applicant is granted leave to appeal. I agree with counsel for the respondent/applicant that the Court of Appeal's decision on the pending application before it has no bearing on this matter. As I understand it, the application in the Court of Appeal seeks leave to file an appeal out of time.
6. The upshot of the foregoing is that I find and hold the application has merit. I grant the respondent/applicant leave to appeal the decision of this court delivered on **9th May 2025**. Each party will bear its own costs.
7. It is so ordered.

**Dated and signed in Mombasa, this 4<sup>th</sup> day of February, 2026.** Delivered virtually through **Microsoft TEAMS**.

**Gregory Mutai**  
**JUDGE**

In the presence of:

Mr Borona, for the Respondents/Applicants;

No appearance for the Applicant/Respondent; and

Bancy – Court Assistant.