



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of the Late Moi (Deceased) (Succession Cause 705 of 2019)  
[2026] KEHC 2117 (KLR) (Family) (17 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2117 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**

**SUCCESSION CAUSE 705 OF 2019**

**EKO OGOLA, J**

**FEBRUARY 17, 2026**

**IN THE MATTER OF THE ESTATE OF THE LATE  
JONATHAN KIPKEMBOI MOI (DECEASED)**

**BETWEEN**

**FREDRICK KIBICHI ..... APPLICANT**

**AND**

**SYLVIA JONATHAN MOI ..... 1<sup>ST</sup> ADMINISTRATOR**

**APRIL JEROP MOI ..... 2<sup>ND</sup> ADMINISTRATOR**

**ASHNEY MARY NYAGICHIRA KIPKEMBOI ..... 3<sup>RD</sup> ADMINISTRATOR**

**CLINT KIPRONO MOI ..... 4<sup>TH</sup> ADMINISTRATOR**

**RULING**

1. The application before this court is dated 14<sup>th</sup> August 2025. According to the proceedings of this court dated 18<sup>th</sup> September 2025; 21<sup>st</sup> October 2025; and 2<sup>nd</sup> December 2025, counsel for the parties stated that there was an application dated 13<sup>th</sup> August 2025 seeking orders for leave to appeal and stay of execution of the Ruling of this Court dated 31<sup>st</sup> July 2025. There is no such application on record.
2. The subject of this ruling is an application dated 14<sup>th</sup> August 2025. The applicant prays for the following orders:
  - a. Spent;
  - b. Pending the hearing and determination of this Summons inter partes, this honourable court do issue an order of stay of execution of its ruling dated and delivered on 31<sup>st</sup> July 2025;



- c. Leave hereby granted allowing the applicant to appeal against the ruling dated and delivered on 31<sup>st</sup> July 2021 by Hon. Justice E. Ogola;
  - d. Pending the hearing and determination of the intended appeal, this honorable court do issue an order of stay of execution of its ruling dated and delivered on 31<sup>st</sup> July 2025.
  - e. Costs of this application are subject to the appeal.
3. The application was based on the grounds set out therein and the applicant's supporting affidavit.
  4. The applicant deposed that the intended appeal is arguable since his constitutional right of appeal has not been exhausted, and that the present application has been brought without delay.
  5. The applicant challenges the order dated 31<sup>st</sup> July 2025 directing kinship/sibling DNA testing. He averred that it has never been in dispute that some of the deceased's children are adopted, and therefore, the proposed scientific inquiry is unnecessary. In his view, subjecting the recognised children of the deceased to DNA testing would amount to discrimination against non-biological children, contrary to the constitutional guarantees of equality and protection of the family, as well as the definition of a child under the *Law of Succession Act*.
  6. He further contended that the parties had previously participated in mediation, culminating in a settlement that was adopted as a consent order of the court. According to him, absent agreement by all parties to vary that settlement, the court ought not to have directed DNA testing. He perceives the ruling as contradictory because it upheld the mediation agreement recognising the children, yet still required testing to ascertain beneficiaries.
  7. The applicant adds that unless the impugned order is halted, the intended appeal will be rendered nugatory, particularly because steps are already being taken to organise the tests. He expresses readiness to abide by any conditions the court may impose and urges that it is in the interests of justice to allow him the opportunity to pursue the appeal.
  8. The 4<sup>th</sup> respondent, a son of the deceased, swore a replying affidavit dated 20<sup>th</sup> August 2025 opposing the application in its entirety. He characterises the application as frivolous, vexatious and an abuse of the court process, whose true purpose is to delay the final administration of the estate.
  9. In his view, the applicant has not demonstrated any real prejudice that would arise from undergoing the test. Rather, he asserts that DNA examination provides the only objective and scientific means of establishing the true beneficiaries of the estate and thereby guarantees justice to all legitimate children.
  10. The 4<sup>th</sup> respondent maintains that the ruling delivered on 31<sup>st</sup> July 2025 properly addressed the central issue in the succession cause, namely the need for certainty regarding paternity. He disputed the suggestion that the mediation settlement conclusively determined that question, arguing that paternity is a matter of fact that cannot rest solely on agreement, particularly where doubts have been raised. According to him, the court did not contradict or set aside the mediation outcome but instead acted within its discretion to verify its foundational assumptions.
  11. He further contended that leave to appeal is not automatic in succession proceedings and that the applicant has failed to identify any arguable point of law. Dissatisfaction with the DNA directive, he argued, is insufficient.
  12. On the stay of execution of the ruling, the 4<sup>th</sup> respondent invoked the requirements for substantial loss and submits that giving a DNA sample is simple, non-invasive and purely evidentiary. Conversely, he averred that delay gravely prejudices the genuine beneficiaries because the estate remains undistributed



and closure is postponed. He urged the court to dismiss the application with costs, asserting that justice is best served by establishing the truth and bringing the matter to finality.

13. The parties were directed to canvass the two applications vide submissions. At the time of writing this ruling, only the applicant and the 4<sup>th</sup> respondent had complied.

### **Determination**

14. It is settled that there is no automatic right of appeal from interlocutory orders in succession proceedings. Leave is therefore required, and the applicant must demonstrate that the intended appeal is arguable and raises bona fide issues deserving consideration by the appellate court.
15. The applicant argues that the order for DNA testing contradicts the mediation settlement upheld by this court and risks discrimination against children whose status had been recognised.
16. The 4<sup>th</sup> respondent, on the other hand, contends that the application is a tactic to delay conclusion of the estate; that DNA testing is the only objective means of attaining certainty; and that the ruling did not set aside the mediation agreement but merely sought to verify its factual basis.
17. I have revisited my ruling of 31<sup>st</sup> July 2025. In that decision, the court declined to set aside the mediation settlement, holding that it possessed contractual force and could only be disturbed on recognised legal grounds, none of which had been demonstrated. At the same time, the court observed that there remained anxiety among the parties concerning paternity and that scientific verification was the most reliable path toward finality.
18. In my view, the present application does not identify any point that was not already considered. The applicant merely reiterates arguments previously urged before the court and expresses dissatisfaction with the outcome. That, by itself, does not constitute an arguable appeal.
19. More importantly, the apprehension that DNA testing may exclude certain individuals from benefit is, with respect, misplaced. Under section 3(2) of the *Law of Succession Act*, a child includes an adopted child, and under section 29, persons who can demonstrate dependency may qualify as beneficiaries whether or not they are biological offspring. The DNA exercise therefore does not conclusively determine entitlement to inherit. It is one evidentiary tool among others available to the court.
20. Consequently, even if any person were found not to be a biological child, such person would remain at liberty to prove qualification under the statute. The fear of automatic exclusion is therefore unfounded.
21. I am therefore not persuaded that the intended appeal raises a bona fide or arguable issue. The threshold for leave has not been met.
22. On stay of execution of the Ruling, assuming leave were available, the applicant must show that unless the stay is granted, the appeal would be rendered nugatory. I am not satisfied that this has been demonstrated. The DNA testing ordered by the court does not distribute the estate, does not confirm beneficiaries, and does not extinguish anyone's statutory right to prove status either as a child within section 3 or as a dependant under section 29. The ultimate determination of entitlement remains a judicial function.
23. Accordingly, the results of the test, whichever way they fall, cannot defeat the applicant's ability to assert his claim within the framework of the *Law of Succession Act*. Conversely, continued delay in implementing the order prolongs uncertainty and postpones resolution of the estate to the detriment of all concerned.
24. From the foregoing, I dismiss the application dated 14<sup>th</sup> August 2025. Cost be in the cause.



Orders accordingly.

**DATED AND DELIVERED AT NAIROBI THIS 17<sup>TH</sup> DAY OF FEBRUARY 2026**

.....

**E.K. OGOLA**

**JUDGE**

In the presence of:

M/s Shah..... for the 4<sup>th</sup> Administrator and 5<sup>th</sup> Beneficiary

M/s Mumalla ..... for Sylvia Moi and 4 Beneficiaries

Mr. Muchelle ..... for 1<sup>st</sup> Respondent

M/s Lisa Muteri holding brief Okech..... for 3<sup>rd</sup> Administrator

M/s Oseko holding brief Nyakundi...for 2<sup>nd</sup> Administrator and 2<sup>nd</sup> Beneficiary

M/s Lukoye holding brief Nyakundi..... for 2<sup>nd</sup> Objector

Mr. Kaboyi Daniel..... for 1<sup>st</sup> Beneficiary

Gisiele Muthoni .....Court Assistant

