

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT THIKA
CIVIL APPEAL NUMBER E119 OF 2025

ESTHER WANJIRU KARIUKI.....APPLICANT

-VERSUS-

MOSES WANJIRU KARIUKI.....RESPONDENT
*(Being an appeal from part of ruling and order in Chief Magistrate's Court at
Thika (Hon. Y.M. Barasa PM) misc succession cause number E038 of 2024
dated 6-02-2025)*

RULING

This is one of the many cases creating unnecessary backlog in our courts system. It is a matter which I believe parties should have attempted to settle amicably or at least ceded some grounds for purposes of progressing their disputes. The parties are blood siblings and are litigating over the estate of their late mother, one Mary Wangui Kariuki and from what I have read in their documents, there is no dispute as to either of them being entitled to a share of the estate. There is already a succession cause pending before the lower court and instead of the parties seeking to obtain full grant, they have resorted to playing what I would call hide and seek games with a view of dragging simple issues for the longest.

Although the information given in this matter is conveniently scanty, I gather that the background of the dispute is that after the parties' mother passed on, the respondent petitioned for a limited grant vide Thika Chief Magistrate's Court misc. succession cause number E038 of 2024 for purposes of filing a suit on behalf of the estate in order to recover parcel of land known as plot no. 1323

(Kariua Mwiriukia Farmers Co-op Society Ltd) which was allegedly disposed of or transferred to a third party through facilitation of the applicant.

The applicant alleged that the respondent did not involve her in processing the limited grant and after discovering that the grant was issued, the respondent filed an application to have it revoked which application was dismissed by the lower court in its ruling dated 6-02-2025 which the applicant intends to challenge hence this application. In the meantime, the applicant had, using the limited grant filed Kandara MELC E023 of 2024.

Now the applicant has approached this court not only asking for leave to appeal the decision aforesaid but also to stay proceedings in the Kandara Magistrate's land case. The application seeks the following orders;

- a. *Spent.*
- b. *Spent.*
- c. *Spent.*
- d. *Pending hearing and determination of this appeal or until further orders of the Honourable Court, Moses Njoroge Wangui be restrained from dealing in any manner with the estate of the late Mary Wangui Kariuki on the basis of fraudulent letters of administration Ad Litem dated 4th April 2024.*
- e. *The Honourable Court do enlarge time to file the annexed memorandum of appeal from the ruling by Hon. Y.M. Barasa delivered on 6th February, 2025 in Thika Chief Magistrate's Court misc succession 38 of 2024.*
- f. *The annexed memorandum of appeal be deemed duly filed upon grant of this application.*
- g. *The Honourable Court do grant leave for the applicant to file his record of appeal out of time.*
- h. *Costs of this application be provided for.*

The applicant by supporting affidavit dated 22nd April 2025 states that the respondent fraudulently appointed himself as an administrator of the estate of their late mother and maintains that the grant was not obtained in the right way. She adds that the trial court had acknowledged that the grant was not obtained in the right way but held that it could not revoke it because it was issued by a court of concurrent jurisdiction. She alleges that she instructed an advocate to file an appeal but she did not pay her full fees and upon enquiring later, she discovered that no appeal had been filed. She urges the court to allow her file the appeal out of time which in her view is arguable.

The respondent has opposed the application through a replying affidavit sworn on 25-05-2025 in which he argues that the application is misconceived and consists of half truths and misrepresentations. He denies having obtained the grant fraudulently as the same was with full concurrence with the other beneficiaries and its sole purpose was to file suit at the Magistrate's court to challenge the sale and transfer of a property belonging to the estate when the deceased had already passed on through facilitation by the applicant. He adds that him and the other beneficiaries reported the matter to the police after which the applicant disappeared. The respondent states further that that the intended appeal is meant to frustrate the efforts of beneficiaries of the estate and swears that there are no valid reasons for failure to file the appeal in time.

I have read the submissions of the applicant dated 22-08-2025 and those of the respondent dated 23-06-2025. To start with, there is no valid appeal before me as an appeal which is filed out of time cannot be one until an order for admission of the same is granted. I will therefore treat this matter as purely an application for leave to file an appeal out of time. I will start with the prayer for

leave to file the appeal out of time because if that were to fail, the other prayers will fall on the wayside.

Whether or not to grant leave to file an appeal out of time is discretionary. A party who comes to court pleading for an equitable remedy must come with clean hands, in time and speak candidly. The applicant must have genuine and convincing reasons why they could not stick to the timelines given by the law. The genuineness of a party is manifested in the way they show readiness to disclose to the court the circumstances and facts of their case. I choose to follow the reasoning of Honourable Justice RE Aburili in ***Ruga Distributors Limited v Nairobi Bottlers Limited [2015] KEHC 214 (KLR)*** where he held that;

‘I find the plaintiff to be a very dishonest person and his deposition reflects that judicial ingenuity on his part. That conduct of an ingenuine plaintiff militates against the exercise of the court’s discretion in its favour. Further dishonesty is reflected in their present advocate’s submissions on record which are carefully couched to say the plaintiff was trying to trace the ‘advocate’ and not the firm. This court does not fall for such cheap theatrical maneuvers. Whoever comes to equity must come with clean hands. The plaintiff’s hands are soiled beyond peradventure and it does not, therefore, deserve the discretion of this court to be exercised in its favour.’

In the matter before me, I find the applicant as being economical with her disclosure. She alleges to have instructed an advocate to appeal but she does not disclose the identity of the advocate and the time or date she gave the instructions. The ruling being appealed was read in the presence of the counsel for both parties. It is not clear whether the advocate she instructed was the same as the one who appeared for her on the date of the ruling.

The ruling was delivered on 6-02-2025 yet the applicant came to court on 15-05-2025 when the matter in Kandara was set for hearing in a week's time. In my view, this is a party who was seeking and hoping to have an order of stay in order to scuttle the hearing of the land matter. This court has not lost sight to the fact that the applicant has been sued as a defendant in the land matter in the lower court. In that case, I see this as an application made to serve her own interest at the expence of the estate of the deceased. I therefore find the prayer for leave unmerited and decline it.

Having declined to grant leave to file appeal out of time, the other prayers have no legs to stand on. In any event, the appellant is a party to the suit in the lower court and the issues she is raising here can competently be raised before the said court without necessity of staying the proceedings. Again, I note that what the respondent holds is a limited grant. The appellant can lay her stake in the estate and raise any issues in a petition for a full grant and as such I see no prejudice. Allowing the application to stay the proceedings will serve no purpose other than clogging the courts with multiplicity of suits and causes which can be handled in one matter.

Following what I have stated above, I find that this application is lacking in merits and the same is dismissed with costs to the respondent.

Dated signed and delivered at Nairobi this 27th day of February 2026.

B.M. MUSYOKI
JUDGE OF THE HIGH COURT.

Ruling delivered in presence of Mr. Kamau for the appellant and in absence of the respondent.

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