



**Kemboi v Chepkwony & 3 others (Civil Application  
E089 of 2025) [2026] KECA 398 (KLR) (5 March 2026) (Ruling)**

Neutral citation: [2026] KECA 398 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT ELDORET  
CIVIL APPLICATION E089 OF 2025**

**JM MATIVO, JA**

**MARCH 5, 2026**

**BETWEEN**

**PHILIP CARLOS KEMBOI ..... APPLICANT**

**AND**

**JEPTARUS CHEPKWONY & 3 OTHERS & 3 OTHERS & 3  
OTHERS ..... RESPONDENT**

*(Being an application for extension of time to seek leave to appeal against  
the ruling/order of the High Court of Kenya at Eldoret (R. Nyakundi,  
J.) dated 20th December 2023 in Succession Cause No. 343 of 2009)*

**RULING**

1. By an application dated 17<sup>th</sup> December 2025 brought under Rules 4 and 41 of the Court of Appeal Rules, 2022, the applicant prays for leave to appeal against the decision rendered by Nyakundi, J. on the 20<sup>th</sup> December, 2023 in Eldoret High Court Succession Cause No. 343 of 2009, Re. Estate of the late Kengu Arap Chepkwony - deceased. The applicant also prays for costs of this application.
2. The grounds in support of the application are that the dispute between the parties involves succession proceedings; there is no automatic right of appeal which exists as against the decision sought to be impugned save by leave of the Superior Court in the first instance and subsequently with leave of this Court; that the Superior Court declined to grant him leave to appeal to this Court; an extension of time is necessary to enable him to apply in this Court for leave to appeal to this Court against the said decision; he was prevented from moving the Court timeously by sufficient cause and that the intended appeal raises matters that are not frivolous.
3. In response to the application, the 1<sup>st</sup> respondent filed the replying affidavit dated 28<sup>th</sup> February 2026 sworn on his behalf and on behalf of the 2<sup>nd</sup> respondent. The salient averment is that the application is an attempt by the applicant to re-litigate his application dated 8<sup>th</sup> January 2025 which was dismissed



by this Court. In support of this averment, the applicant annexed a copy of the ruling dismissing the aforesaid application marked "B". Further, the orders being sought are discretionary in nature, therefore the applicant does not deserve the same.

4. The applicant is not sincere. Annexed to the respondents' replying affidavit is a ruling rendered by this Court dated 28<sup>th</sup> January 2025. In the application the subject of the said ruling, the applicants were Philip Carlos Kemboi and Leah Chelimo Chepkwony approached this Court by an application dated 8<sup>th</sup> January 2025 essentially seeking two substantive reliefs, namely, a stay order and leave to appeal to this Court against the entire ruling delivered by Nyakundi, J. on 25<sup>th</sup> October 2024 in Eldoret HC Succession Cause No. 343 of 2009, in the matter of the estate of the late Kengu arap Chepkwony. The said application was heard and dismissed on 28<sup>th</sup> January 2025. In dismissing the application, this Court stated:

" 10. Notably, the above provision clearly stipulates timeframes within which a party seeking leave must adhere. Nyakundi, J. delivered the impugned ruling on 25<sup>th</sup> October 2024 in which he declined to grant the applicant leave to appeal against his decision made on 20<sup>th</sup> December 2023. Rule 41 (1) b) is couched in mandatory terms. The applicant was mandatorily required to approach this Court for leave to appeal within 14 days of the refusal by the High Court. The application before us is dated 8<sup>th</sup> January 2025, long after the 14 days had lapsed. Therefore, the instant application seeking stay of execution of the ruling on 25<sup>th</sup> October 2024 is incurably defective and it has no legs to stand on. The applicants never sought extension of time under Rule 4 of this Court's Rules. Despite this glaring omission, the applicants approached this Court seeking leave to appeal and stay. Their application was to say the least, dead on arrival. The effect is that there is no basis upon which the two prayers sought can be granted. Accordingly, the application dated 8<sup>th</sup> January 2025 fails. It is dismissed with costs to the respondents."

5. Philip Carlos Kemboi has now approached this Court alone seeking substantially similar reliefs, which is not only impermissible but it amounts to abuse of Court process. I can usefully profit from the Supreme Court decision of India in *M/s Sciemed Overseas Inc vs. BOC India Limited*, AIR 2016 which reaffirmed that filing a false affidavit is an "evil" that must be curbed. When an affidavit in support of a delay application is found to be based on falsehoods to manipulate the limitation period, the Court may not only reject the application but also initiate proceedings for perjury.
6. The Court has an inherent jurisdiction to protect itself from abuse or to see that its process is not abused. The Black's law dictionary, Sixth Edition Black defines abuse as "everything which is contrary to good order established by usage that is a complete departure from reasonable use. An abuse is done when one makes an excessive or improper use of a thing or to employ such thing in a manner contrary to the natural legal rules for its use."
7. The concept of abuse of Court/Judicial process is imprecise. It involves circumstances and situations of infinite variety and conditions. It is recognized that the abuse of process may lie in either proper or improper use of the judicial process in litigation. Situations that may give rise to an abuse of court process are in exhaustive. They include circumstances where the process of court has not been or resorted to fairly, properly, honestly to the detriment of the other party. Examples include:



- a. Instituting a multiplicity of actions on the same subject matter, against the same opponent, on the same issues or multiplicity of actions on the same matter between the same parties even where there exists a right to begin the action.
  - b. Instituting different actions between the same parties simultaneously in different courts even though on different grounds.
  - c. Where two similar processes are used in respect of the exercise of the same right.
  - d. Where an application for adjournment is sought by a party to an action to bring another application to court for leave to raise issue of fact already decided by court below.
  - e. Where there no iota of law supporting a court process or where it is premised on recklessness. The abuse in this instance lies in the inconvenience and inequalities involved in the aims and purposes of the action.
  - f. Where a party has adopted the system of forum-shopping in the enforcement of a conceived right.
  - g. Where an appellant files an application at the trial court in respect of a matter which is already subject of an earlier application by the respondent at the Court of Appeal.
  - h. Where two actions are commenced, the second asking for a relief which may have been obtained in the first.
8. Abuse of judicial process is a term generally applied to a proceeding which is wanting in bona fides and is frivolous, vexatious and oppressive. Abuse of process can also mean abuse of legal procedure or improper use of the legal process. Justice Niki Tobi JSC of Nigeria observed that abuse of court process creates a factual scenario where a party is pursuing the same matter by two court processes. In other words, a party by the two- court process is involved in some gamble; a game of chance to get the best in the judicial process. Litigation is not a game of chess where players outsmart themselves by dexterity of purpose and traps. Litigation is a contest by judicial process where the parties place on the table of justice their different positions clearly, plainly and without tricks.
9. I have said more than enough to demonstrate that the application under consideration is not worth the time, ink and paper already deployed in addressing it. It's a waste of precious judicial time. It was dead on arrival. Accordingly, the application dated 17<sup>th</sup> December 2025 is dismissed with costs to the respondents.

**DATED AND DELIVERED AT ELDORET THIS 5<sup>TH</sup> DAY OF MARCH, 2026.**

**J. MATIVO**

**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

Signed.

**DEPUTY REGISTRAR.**

