

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
SUCCESSION CAUSE NO. E014 OF 2023

**IN THE MATTER OF THE ESTATE OF THE LATE ESTHER
CHELANGAT KIGEN (DECEASED)**

GRACE RONO1ST
PETITIONER/RESPONDENT

MARY CHERONO KIGEN2ND
PETITIONER/RESPONDENT

ZEDDY LANGAT3RD
PETITIONER/RESPONDENT

VERSUS

JANE CHEPKOECH TARE PROTESTOR/APPLICANT

RULING

1. Before me for determination is the Applicant's Summons dated 20th August 2025. The application seeks the following orders;

a) Spent.

b) THAT the firm of Rodi, Orege & Company Advocates be granted leave to come on record for the Protestor/Applicant in place of the firm of G.K. Kiletyen & Company Advocates.

c) Spent.

d) THAT this Honourable Court be pleased to order for stay of execution of the Judgment delivered on 17th

July, 2025/ decree and all other consequential orders issued thereafter pending the hearing and determination of the intended appeal.

e) THAT the Applicant be granted leave to file an appeal to the Court of Appeal against the Judgment of this Honourable Court delivered on 17th July, 2025.

f) THAT the costs of this application be provided for.

2. The application is supported by the affidavits of the Applicant, **Jane Chepkoech Tare**, and her written submissions. She contends that the judgment disregarded clear evidence that the deceased had distributed her property *inter vivos*, that she has been in occupation and farming on the estate land for many years, and that execution of the judgment would displace her and render her intended appeal nugatory. She invokes Sections 28 and 42 of the Law of Succession Act, arguing that the deceased's lifetime advancements ought to have been considered. She relies on ***Rhoda Wairimu Karanja & Another v Mary Wangui Karanja & Another [2014] eKLR***, where the Court of Appeal emphasized that leave to appeal in succession matters may be granted where prima facie grounds exist.

3. The Respondents opposed the application through a Replying Affidavit sworn on 8th October 2025 and submissions dated 4th November 2025. They argue that the deceased died intestate, made no gift *inter vivos*, and that the Applicant's memorandum of appeal raises no weighty points of law. They submit that the application is intended to delay implementation of the judgment,

citing ***Kenya Shell Ltd v Benjamin Karuga Kibiru & Another [1986] KLR 410*** and ***James Wangalwa & Another v Agnes Naliaka Cheseto [2012] eKLR*** to emphasize that substantial loss must be demonstrated and mere execution of a lawful judgment is not sufficient. They further argue that the Applicant's grievance is discriminatory, being premised on disapproval of female children inheriting, contrary to Article 27 of the Constitution. They urge the Court to dismiss the application with costs, stressing that succession litigation must come to an end.

4. The issues arising for determination are:

- ***Whether leave for change of advocates should be granted;***
- ***Whether stay of execution should issue; and***
- ***Whether leave to appeal should be granted.***

5. On prayer 2, Order 9 Rule 9 of the Civil Procedure Rules requires leave of court where a change of advocates is sought after judgment has been delivered or coming on record by way of consent between the incoming and the outgoing advocates. This prayer is procedural, unopposed, and falls squarely within the law. It is therefore granted.

6. On prayers 3 and 4, the Applicant seeks stay of execution. She argues displacement and loss of livelihood, pointing to her long occupation and farming activities on the estate land. She submits that unless stay is granted, the intended appeal will be rendered nugatory.

7. The Respondents on the other hand counter that her homestead will be preserved within her share of the estate, and that mere occupation does not confer proprietary rights. They argue that substantial loss must be real and demonstrable. They further propose that tea proceeds from the estate be deposited in a joint account to safeguard the estate pending full administration.

8. I note that succession litigation is not akin to commercial disputes. The guiding principle is that family disputes must be resolved expeditiously to allow beneficiaries to enjoy the fruits of the estate. In ***Re Estate of M'Ngarithi M'Miriti (Deceased) [2017] eKLR***, the Court held that "litigation in succession matters must come to an end to allow beneficiaries to enjoy the fruits of the estate." Similarly, in ***Re Estate of G.K.K (Deceased) [2017] eKLR***, the Court emphasized that prolonged litigation undermines family harmony and delays inheritance rights.

9. The Applicant has not demonstrated substantial loss beyond mere occupation. Her claim of displacement is not borne out by evidence, as the Respondents have shown readiness to safeguard her homestead within her share. I am therefore not persuaded that the threshold for stay has been met. Prayers 3 and 4 are accordingly dismissed.

10. On prayer 5, the law is clear that there is no automatic right of appeal in succession matters. In ***Reuben Wambui Karanja &***

Another v Mary Wambui Karanja & Another [2014] eKLR, the Court of Appeal held that leave will only be granted where prima facie grounds exist that merit serious consideration.

11. The Applicant's grounds, centered on alleged *inter vivos* distribution, were not supported by evidence at trial. The herewith annexed memorandum of appeal raises no weighty points of law. While she invokes Sections 28 and 42 of the Law of Succession Act, these provisions were considered in the judgment, and no new or arguable issue has been demonstrated.

12. In ***Sango Bay Estates Ltd v Dresdner Bank AG [1971] EA 17***, the Court held that leave to appeal should only be granted where prima facie grounds exist that merit serious consideration. I find none in the present case. Prayer 5 is therefore dismissed.

14. In light of the foregoing, I make the following orders;

a) Prayer 2 is granted. The firm of Rodi, Orege & Company Advocates is hereby allowed to come on record for the Applicant in place of G.K. Kiletyen & Company Advocates.

b) Prayers 4 and 5 lacks merit and are hereby dismissed.

c) Each party to bear their own Costs given that this is a family matter.

Dated, signed and delivered at Kericho this 19th day of February, 2026.

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**J. K. SERGON
JUDGE**

In the Presence of:-

C/Assistant - Rutoh

Miss Chepkemai for the Petitioner

Miss Mungai for Objector/Applicant