

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
HIGH COURT SUCCESSION CAUSE NO. 193 OF 2008

**IN THE MATTER OF THE ESTATE OF THE LATE KIPKETER
ARAP ROTICH (DECEASED)**

RICHARD KIPRONO BII.....1ST
APPLICANT

KENNEDY CHERUIYOT KETER.....2ND
APPLICANT

FRANKLINE KETER.....3RD
APPLICANT

JOASH KETER.....4TH
APPLICANT

VERSUS

WILSON KETER.....1ST
RESPONDENT

BENARD KETER.....2ND
RESPONDENT

AND

MARY CHEPKOECH ROTICH...
4THPETITIONER/ADMINISTRATOR

RULING

1. Before this Court for determination is the Notice of Motion application dated 9th October 2025. It is brought by Richard Kiprono Bii, Kennedy Cheruiyot Keter, Frankline Keter, and Joash Keter (hereinafter "the Applicants") against Wilson Keter and Benard

Keter (hereinafter "the Respondents"), with Mary Chepkoech Rotich joined as the 4th Petitioner/Administrator.

2. The application seeks the following orders;

a. THAT Applicants be granted leave by this Court to appeal to the Court of Appeal against the judgment of this court delivered on 12th October 2023 in Kericho High Court Succession Cause No. 193 of 2008;

b. THAT the time with which to file a Notice of Appeal, Memorandum of Appeal, and Record of Appeal out of time be extended to a period to be set by this Honourable court.

c. THAT a Notice of Appeal on record be deemed as properly on record and be served forthwith.

d. A stay of execution of the judgment dated 12th October 2023 and consequential orders pending the hearing and determination of the intended appeal;

e. Costs of the application.

3. The application is supported by the grounds set out on its face and the Supporting Affidavit of Richard Kiprono Bii sworn on even date. The Applicants also filed written submissions dated 18th February 2026, a case digest, and a list of authorities.

4. The application is opposed by multiple parties through the Grounds of Opposition by the 4th Petitioner/Administrator dated 19th

December 2025, Respondents' Written Submissions dated 6th February 2026, Replying Affidavit of Wilson Kipkorir Keter sworn on 7th January 2026.

5. This Court has carefully considered all the pleadings, affidavits, submissions, and authorities cited. To properly contextualize this application, it is necessary to set out the factual matrix within which it arises.

- ***The deceased, Kipketer Arap Rotich, died intestate. This Succession Cause was commenced for the purposes of administering his estate. The deceased was polygamous, having had five (5) houses.***
- ***On 12th October 2023, this Court delivered a judgment distributing the estate of the deceased. The judgment determined the contentious issues regarding the mode of distribution among the five houses and allocated the assets of the estate accordingly.***
- ***The Applicants herein claim to be beneficiaries from the 2nd and 3rd houses of the deceased. They claim to be aggrieved by the said judgment.***
- ***On 24th October 2023, the Applicants filed a Notice of Appeal expressing their intention to appeal against the whole judgment. The said Notice of Appeal was lodged in this Court on 25th October 2023.***
- ***The Applicants also applied for certified copies of the proceedings. They were subsequently issued with a***

Court of Appeal number, COACA/E082/2024, by the Court of Appeal registry at Nakuru.

- ***No Memorandum of Appeal or Record of Appeal was filed thereafter. No application for leave to appeal was made at the time of filing the Notice of Appeal or within the prescribed timelines.***
- ***Nearly two (2) years later, on 9th October 2025, the Applicants, now represented by M/s GKL Advocates LLP, filed the present application.***

6. The Applicants contends to be biological children of the deceased ***from the 2nd and 3rd houses. They argue that;***

• ***They have locus standi as beneficiaries under Section 29 of the Law of Succession Act;***

• ***They acted promptly by filing a Notice of Appeal on 24th October 2023;***

• ***As laypersons with no legal representation and facing financial constraints, they were unaware of the requirement to seek leave to appeal;***

• ***They genuinely believed that having obtained an appeal number (COACA/E082/2024), the appeal was properly lodged;***

• ***The delay is excusable under Section 7 of the Appellate Jurisdiction Act;***

· They rely on Paul Wanjohi Mathenge v Duncan Gichane Mathenge [2013] KECA 199 (KLR) where the Court of Appeal granted leave after a 2-year delay.

7. The 1st Respondent, Wilson Keter, in his Replying Affidavit sworn on 7th January 2026, deposes that;

· The succession cause was lawfully prosecuted to conclusion and the estate has been fully distributed;

· The Applicants are strangers to the estate and have not demonstrated any blood relationship, dependency, or legal entitlement;

· The 2nd Respondent, Benard Keter, is not and has never been an administrator of the estate and is wrongly enjoined;

· The application has been brought after inordinate delay of two years;

· The Court is functus officio;

· The intended appeal is dead for failure to file a Memorandum of Appeal within 60 days;

· Granting the application would occasion grave prejudice to beneficiaries who have already settled and developed their portions.

8. The Respondents' Written Submissions dated 6th February 2026 add that, the Applicants were represented by counsel in the trial

court (J.K Kirui for 2nd and 3rd Houses) and their claim of being laypersons with no representation is false; that the principles in ***Nicholas Kiptoo Arap Korir Salat v IEBC & Others [2014] eKLR*** and ***Leo Sila Mutiso v Rose Hellen Wangari Mwangi [1999] 2 EA 231*** require a satisfactory explanation for delay, which the Applicants have failed to provide; and that the Applicants have approached the Court with unclean hands.

9. The 4th Petitioner/Administrator, in her Grounds of Opposition dated 19th December 2025, contends that, the Applicants are strangers to the estate and lack locus standi, they ought to have filed for revocation of grant first and that they are guilty of laches and inordinate delay.

10. The following issues arise for determination:

a. Whether the 2nd Respondent (Benard Keter) is properly joined in these proceedings;

b. Whether the Applicants have locus standi to bring this application and to pursue an appeal;

c. Whether the delay of approximately two years has been sufficiently explained and is excusable;

d. Whether the Applicants are entitled to the orders sought;

e. Who should bear the costs of this application.

11. The 1st Respondent deposed, that the 2nd Respondent, Benard Keter, is not and has never been an administrator or personal representative of the estate of the deceased. He was therefore wrongly, improperly, and unlawfully enjoined in these proceedings.

12. The Applicants have not demonstrated any cause of action against the 2nd Respondent. They have not shown that he is a necessary party to these proceedings.

13. In ***Mumo v Kioko [2021] eKLR***, the Court of Appeal held that a party against whom no cause of action is disclosed is entitled to be struck out from the proceedings. The 2nd Respondent, Benard Keter, is improperly joined. No cause of action has been disclosed against him. His name is hereby struck out from these proceedings.

14. The question of locus standi is fundamental. Without it, the Applicants cannot be heard. Section 29 of the Law of Succession Act defines "dependant" to include children of the deceased. However, having a beneficial interest is one thing; being a party to specific proceedings is another.

15. In ***Kenya Commercial Bank Limited v Specialised Engineering Co. Ltd [1982] KLR 485***, the Court of Appeal held that a person who is not a party to a suit has no right of appeal against the judgment in that suit unless he can demonstrate that he has been aggrieved by the judgment and that his interests have been directly affected.

16. In ***Mbaki & Others v Macharia & Another [2005] 2 EA 206***, the Court of Appeal stated;

"A person who is not a party to a suit has no right of appeal against the decision of the court unless he has been granted leave to appeal or he can demonstrate that he has been aggrieved by the decision and his interests have been directly affected."

17. This Court has perused the record of proceedings in Succession Cause No. 193 of 2008. The Applicants herein were not listed as Objectors. They did not file affidavits in opposition to the petition. They did not participate in the hearings leading to the judgment of 12th October 2023. They were not parties to the proceedings.

18. The affidavit in support of the petition for letters of administration, which the Applicants rely upon, lists many names. It does not, without more, confer upon every person listed the status of a party to the proceedings. Being listed as a beneficiary in a petition does not automatically make one a party or entitle one to appeal a judgment without having participated in the trial.

19. Furthermore, in ***Jamleck Maina Njoroge v Mary Wanjiru Mungai [2015] eKLR***, the Court of Appeal held:

"Where a person claims to be a dependant of the deceased but was not involved in the succession proceedings, the proper course is to apply for revocation or

annulment of the grant under Section 76 of the Law of Succession Act."

20. The rationale is sound. It allows the trial court to determine the status of the applicant, whether they are indeed dependants, what their interest in the estate is, and whether they were wrongly excluded. This determination is essential before any appeal can be lodged, as the Court of Appeal cannot determine questions of fact regarding dependency in the first instance.

21. The Applicants have not sought revocation of grant. They have not established their standing before this Court. I find and hold that the Applicants lack locus standi. They were not parties to the succession proceedings and have not established their interest in the estate.

22. Even if the Applicants had locus standi, the application would still fail for inordinate and unexplained delay. The judgment was delivered on 12th October 2023. The application was filed on 9th October 2025 a delay of two years.

23. The principles governing extension of time are well settled. In ***Leo Sila Mutiso v Rose Hellen Wangari Mwangi [1999] 2 EA 231***, the Court of Appeal held that the court should consider;

a. The length of the delay;

b. The reason for the delay;

c. The chances of the appeal succeeding; and

d. The degree of prejudice to the respondent.

24. In ***Nicholas Kiptoo Arap Korir Salat v IEBC & Others [2014] eKLR***, the Supreme Court added that extension of time is not a right but an equitable remedy, and the applicant must act equitably. A two-year delay is manifestly inordinate. In succession matters, where expeditious distribution is paramount, such delay cannot be countenanced.

25. The Applicants' explanation is threefold;

a. Ignorance of the law;

b. Mistaken belief that having an appeal number meant the appeal was lodged;

c. Financial constraints.

26. Ignorance of the law is no excuse. The maxim ignorantia juris non excusat applies. The Applicants filed a Notice of Appeal, demonstrating some knowledge of procedure. They cannot claim total ignorance. Furthermore, the record shows that the Applicants were represented by counsel in the trial court. The 2nd and 3rd Houses were represented by the firm of J.K Kirui. The claim of being laypersons with no representation is false. Mistaken belief is unreasonable. The issuance of an appeal number is an administrative act. It does not signify that the appeal has been perfected. No reasonable litigant would wait two years without any communication from the court and do nothing. Litigation is not a

passive exercise. The court does not chase litigants; litigants pursue their cases.

27. Financial constraints are not sufficient. In ***Habib Bank AG Zurich v Eugene N. M. K. Kiapi [2004] eKLR***, the Court of Appeal held that financial constraints, without more, are not a sufficient reason for extending time. The Applicants were represented by counsel at trial. They have not explained why they could not contact their former advocates or seek pro bono assistance.

28. The Respondents have deposed, without contradiction, that;

- ***The estate has been fully administered;***
- ***Beneficiaries have taken possession of their shares;***
- ***Titles have been issued and beneficiaries have utilized the***
land.

30. To grant leave at this stage would cause grave prejudice to the Respondents and other beneficiaries who have relied on the finality of the judgment. In ***Railway and Transport Workers Union v Kenya Railways Corporation & Another [2014] eKLR***, the Court of Appeal stated:

"The court must balance the rights of the applicant against the rights of the respondent. Where the respondent

has acquired rights or has acted on the basis of the judgment, the court will be reluctant to disturb that position after an inordinate delay."

31. I find that the delay is inordinate, unexplained, and inexcusable. The application fails on this ground as well.

32. Furthermore, the Respondents have demonstrated that the Applicants were represented by counsel at the trial. Their claim of being laypersons with no representation is therefore false. They have approached this Court with unclean hands.

33. Given the findings above, the prayer for stay is moot.

34. On costs the applicant prays that costs of this application be provided for. Section 27 of the Civil Procedure Act provides that costs follow the event, unless the court for good reason orders otherwise. Since this is a family matter, a fair order is that each party should bear own costs.

35. In light of the foregoing, the Notice of Motion dated 9th October 2025 is hereby dismissed in its entirety. Each party to bear own costs.

36. Orders accordingly.

**Dated, signed and delivered at Kericho this 12th day
of March, 2026.**

.....
**J. K. SERGON
JUDGE**

In the Presence of:-

C/Assistant - Rutoh

No Appearance for the Applicant

Mwita for the 4th Petitioner