

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

HIGH COURT FAMILY SUCCESSION APPEAL CASE NO. 1 OF

2020

BLASIO NDERITU KARIUKI & 8

OTHERS.....APPELLANT

VERSUS

ELIZABETH WANGECHI MWANGI.....

RESPONDENT

RULING

1. The Applicants filed in the High Court the Summons dated **8th July 2025** seeking the following orders:-

“1. SPENT.

2. THAT the Applicant herein be granted leave to file a

Notice of Appeal and Record of Appeal out of time.

3. THAT the Notice of Appeal already filed be deemed as duly filed and properly filed.

4. **THAT this Honourable Court be pleased to grant a stay of execution of the ruling delivered by this Honourable Court on 8th November 2022 specifically in relation to distribution of Land Parcel Land Nyeri/Watuka/1475 pending the hearing and determination of the Appeal.**
5. **THAT costs of this application be provided for.**
2. The application was premised upon **Section 47 and 50 of the Law of Succession Act, Rule 73 of the Probate and Administration Rules** and all enabling provisions of the law and was supported by the affidavit of even date sworn by **BLASIO NDERITU KARIUKI** the 1st Applicant.
3. The Respondent **ELIZABETH WANGECHI MWANGI** opposed the application through the Replying Affidavit dated **26th July 2025**. The matter was canvassed by way of written submissions. The Applicants filed the written submissions dated **19th November 2025** whilst the Respondent relied upon her written submissions dated **1st December 2025**.

BACKGROUND

4. This succession cause relates to the estate of the Late **FRANCIS KARIUKI NGUITUI** (the Deceased) who died intestate on **23rd April 2013**. Following the demise of the Deceased the Respondent **Elizabeth Wangechi** and the 1st Applicant **Blasio Ndiritu** were issued with Grant of letters of Administration Intestate on **21st November 2016**. The Administrators then filed in Court a Summons for confirmation of Grant dated **6th February 2018**. Several other beneficiaries filed an Affidavit of Protest dated **25th July 2018** challenging the proposed mode of distribution of the estate. This protest was heard in the Magistrates' Court and in a judgment delivered on **19th February 2020 Hon. KEFA Senior Resident Magistrate** set out the mode of distribution of the estate.
5. The Applicants herein were aggrieved by the judgment of the Lower Court and filed an appeal to the High Court. The said appeal was duly heard and vide a judgment delivered on **8th November 2022 Hon. Justice J. N. NJAGI** dismissed the appeal save for varying the mode of distribution of one asset being **LR AGUTHI/MURUGURU/1370**. The applicants

were still dissatisfied by the decision of the High Court and specifically the Applicants wish to challenge the mode of distribution of one asset namely **LR NYERI/WATUKA/1475**. The Applicants now seek leave to file an appeal out of time.

6. As stated earlier the Respondent who is an administrator of the estate opposes this application.

ANALYSIS AND DETERMINATION

7. I have carefully considered the application before this court, the reply filed thereto as well as the written submissions filed by both parties.
8. The Applicants have sought for leave to appeal out of time in the mistaken belief that they have a right of second appeal to the Court of Appeal. As I shall demonstrate this is not the case.
9. It is pertinent to note that this is a succession cause. There has already been one appeal filed in this cause against the judgment delivered in the Magistrates Court. The Applicants are now seeking to file a **second appeal** in the matter to challenge the judgment of the High Court in the same cause.

10. **Section 50(1)** of the **Law of Succession Act Cap 160, Laws of Kenya** provides that

“50(1) An appeal shall lie to the High Court in respect of any order or decree made by a resident magistrate in respect of any estate and the decision of the High Court thereon shall be final.” [Own emphasis]

11. A clear reading of the above provision makes it abundantly clear that no right of appeal is granted in succession matters concluded in the High Court. In other words the Applicants have no legal right to pursue an appeal in the Court of Appeal. The law forbids a second appeal in succession matters.

12. In the case of **HAFWA OMAR ABDULLAH TAIB & Others - vs- SWALEH ABDALLA TAIB [2015] eKLR**, the **Court of Appeal** observed that the Appellate jurisdiction in respect of succession cases is donated by **Section 50(1)** of the **Law of Succession Act** which makes it clear that decisions from the Magistrates’ Courts in Succession cases are appealable to the High Court whose decision is final.

13. For this reason I find that this application is superfluous and cannot be entertained by this Court.
14. Even if the court were to consider the application for leave to appeal out of time I find that the same has come too late in the day.
15. **Section 79G** of the **Civil Procedure Act Cap 21, Laws of Kenya** provides as follows:-

“Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery of a copy of the decree or order provided that an appeal may be admitted out of time if the Appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.” [Own emphasis]

16. Therefore the statutory period allowed within which one is required to file an appeal is **thirty (30) days**. However with the leave of the court this statutory period may be extended.
17. One of the requirements in an application seeking leave to file appeal out of time is a consideration of whether the application has been brought without delay. In this case the impugned judgment was delivered on **8th November 2022**. The Applicant filed a Notice of Appeal on **5th December 2022** less than one (1) month after the judgment was delivered.
18. The Applicant averred that they then applied for certified copies of the proceedings. However due to delays in the typing the proceedings were not ready for collection until **22nd February 2023**. The Applicant annexed the Certificate of Delay dated **23rd April 2024** (Annexure '**BNK 4**')
19. All this is very well and good and indeed goes some way to explain the delay in filing the appeal. However I note that having obtained certified copy of the proceedings in **February 2023**, it was not until **July 2025** more than two (2) years later that this application was filed. This **two (2)**

year delay is in my view inordinate and no explanation has been given for that delay.

20. Based on my findings above I find it would amount to an exercise in futility to consider the prayer for stay of execution pending hearing and determination of the Appeal. In conclusion I find no merit in this application. The same is dismissed in its entirety. This being a family matter each side will bear its own costs.

Dated in Nyeri this 19th day of March 2026.

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MAUREEN A. ODERO
JUDGE