



**Rashid (Suing as legal representatives of the Late Rashid Mughal) & another
v Bhola (Suing as legal representative of the Late Mohammed Saddiq Bhola)
(Succession Cause 455 of 1996) [2026] KEHC 5212 (KLR) (22 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5212 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 455 OF 1996
PN GICHOHI, J
APRIL 22, 2026**

**IN THE MATTER OF THE ESTATE OF SADDIQ BHOLA ALSO
KNOWN AS MOHAMMED SADIQ BHOLA (DECEASED)**

BETWEEN

**SAHEEL RASHID MUGHAL ARFHAN RASHID (SUING AS LEGAL
REPRESENTATIVES OF THE LATE RASHID MUGHAL) 1ST APPELLANT
ABDUL RAHIM MOHAMMED (SUING AS LEGAL REPRESENTATIVE OF THE
LATE MOHAMMED RAFIQ)) 2ND APPELLANT**

AND

**MOHAMMED SHABIR BHOLA (SUING AS LEGAL REPRESENTATIVE OF
THE LATE MOHAMMED SADDIQ BHOLA) RESPONDENT**

RULING

1. Before this court are Five Applications for determination. The First Application was filed by the firm of Mirugi Kariuki and Company Advocates for the niece of the deceased, Zahida Mughal. The Application is dated 13th December, 2022, and expressed under Section 74 of the Laws of Succession Act and Rule 43, 49, and 73 of the Probate and Administration Rules, seeking Orders;-
 1. That an order that the property identified as IR 276/2516 Rumuruti belongs to the estate of the late Mohammed Latif Bhola.
 2. That the court confirms the distribution of the said property (IR 276/2516 Rumuruti) in equal shares to Nasreen Begum Mughal and Zahida Mughal.
2. The Application is based on the grounds on the face of the Summons and supported by the Affidavit of Zahida Mughal, sworn on the same date. She states that she is a daughter of the late Mohammed



Latif Bhola and the niece of the deceased, Saddiq Bhola (The deceased herein). She explains that the two brothers were close business associates who owned several properties together as tenants in common, meaning each held a half-undivided interest in their joint assets. Specifically, she points to two properties, IR 276/LR 2516 and IR 15681/LR 3249, both located in Rumuruti, that were part of this shared arrangement.

3. She recounts that after her father passed away, her family initiated and finalised a separate succession case, Nakuru High Court Succession Cause No. 656 of 2005, where a rectified certificate of confirmation of grant was eventually issued in June 2017. Since Saddiq Bhola had passed away first, his half-interest in those shared properties was legally supposed to pass to his own dependents.
4. Zahida states that the beneficiaries of both estates held deliberations and reached a mutual agreement to simplify the distribution. Instead of splitting both properties into halves, they decided by consent that each estate would take full ownership of one property; her father's estate settled for IR 276/2516 Rumuruti, while her uncle's estate took IR 15681/LR 3249.
5. On that basis, Ms. Zahida states that it is necessary for the court to intervene so that the property known as IR 276/2516 can be officially recognised as belonging to her father's estate and removed from the estate of Saddiq Bhola. She is asking the court to confirm this distribution so that she and her sister, Nasreen Begum Mughal, can inherit the property in equal shares, as was agreed. She emphasises that this application is essential for her to finally secure her rightful share of the inheritance.
6. Rashid Mughal, the 1st Intended Applicant and the son of Saddiq Bhola, opposes the application by his replying Affidavit sworn on 20th March, 2023, asserting that it is fundamentally bereft of merit.
7. He explains that the application is an attempt to undermine a pending appeal in the Court of Appeal (NAKURU COA CA 107 OF 2018), in which he is actively seeking a complete overhaul of the estate's distribution process.
8. He further challenges the procedural integrity of the application, pointing out that although there are 6 beneficiaries of the estate of the late Saddiq Bhola, the applicant has curiously chosen to serve only two of them (Herself and her sister Nasreen Malik).
9. Regarding the substantive claims made by Zahida Mughal, Rashid states that he does not know of any joint business conducted between the Applicant's father and his own deceased father. He also denies the existence of any deliberations or agreements between the beneficiaries of the two estates concerning the mode of distribution for properties LR 276/2516 and LR 15681/LR 3249.
10. Lastly, Rashid maintains that both parcels of land belong entirely to his deceased father's estate. He contends that any action regarding these properties should only be addressed after the conclusion of the ongoing appeal, and therefore urges the court to dismiss the application as inept and unmerited.
11. Vide a supplementary Affidavit sworn on 31st October, 2024, Zahida Mughal maintains that her application is meritorious and is specifically intended to ensure a just and expedient disposal of the succession cause.
12. She clarifies that her request seeks to expedite the determination of the matter rather than rendering the pending appeal (NAKURU COA CA 107 OF 2018) nugatory, as was alleged. She dismisses those concerns as far-fetched and misleading, pointing out that the appeal in question does not even relate to or mention the property known as IR 276/2516 Rumuruti.



13. She maintains that the 1st Intended Applicant's entire opposition is misplaced and misdirected, lacking any real rebutting value. Consequently, she reiterates the full contents of her original supporting affidavit and urges the court to view her application as a necessary step toward finality.
14. On the 13th March 2025, the 1st Intended Appellants, acting through the firm of Kiplenge, Andama & Makau Advocates, moved this Court by way of Summons dated 12th March 2025. This application followed the demise of the late Rashid Mughal and the subsequent substitution of his interest by his administrators, Saheel Rashid Mughal and Arfan Rashid, pursuant to a consent dated 6th May 2024, which was duly adopted as an order of this Court.
15. By the said Summons, the Applicants seek the following reliefs:-
 1. This application be certified as urgent and be heard ex-parte in the first instance.
 2. There be a stay of execution of the judgment and/or orders of this Honourable Court delivered on 14th November 2014, pending the hearing and determination of this application.
 3. This Honourable Court be pleased to grant leave to the Applicants to appeal to the Court of Appeal against the judgment and/or orders of this Honourable Court delivered on 14th November 2014.
 4. The costs of this application be in the cause.
16. The application is predicated upon the grounds set out on the face of the Summons and is further supported by the Affidavit of the Applicants, sworn on even date. The Applicants, Saheel Rashid Mughal and Arfan Rashid, depose that they are the sons of the late Rashid Mughal (himself a son of the deceased, Saddiq Bhola) and that they move this Court in their capacity as the duly appointed administrators of their late father's estate.
17. They contend that their late father had previously challenged the Summons for Confirmation of Grant filed by the 1st Respondent, Mohamed Shabir Bhola. They aver that in the resulting Judgment delivered on 14th November 2014, the Court (Emukule, J.) unfairly excluded both their late father and the late Mohammed Rafiq from participating in the distribution of the remainder of the estate, thereby occasioning a departure from their rightful entitlements under the law.
18. They state that aggrieved by the said determination, their late father and Mohammed Rafiq moved to impugn the Judgment by lodging an appeal before the Court of Appeal, being Nakuru Civil Appeal No. 41 of 2018. The Applicants point out that at the material time of lodging the said appeal, the requirement for seeking leave in succession matters remained an unsettled point of law, characterised by divergent judicial opinions from the Court of Appeal, which allowed for conflicting interpretations regarding the necessity of such leave.
19. They state that during the pendency of the appeal, the 1st Respondent moved the appellate court via Civil Application No. 108 of 2016 seeking to have the appeal struck out. However, the parties subsequently entered into a consent dated 30th May 2018, intended to regularise the institution of the appeal. Notwithstanding the existence of this consent, the Court of Appeal, in its Judgment delivered on 28th February 2025, struck out the appeal on the technicality that formal leave to appeal had not been obtained from the High Court.



20. Consequently, the substantive merits of the Applicants' grievances remain unaddressed and undetermined by any appellate forum. They assert that they remain deeply committed to ventilating these merits, as the intended appeal raises profound and triable issues of law and fact regarding the distribution of the estate.
21. Specifically, they argue that the High Court erred by relying on a 1996 family agreement that was essentially a sale of inheritance, an arrangement they contend is illegal and unenforceable under the *Law of Succession Act*. They further point out that the court failed to recognise their father's rightful interest in several properties and disregarded the fact that he was actually a co-owner of the assets rather than just a beneficiary.
22. The Applicants emphasise that because the judgment involves the distribution of immovable property, it is crucial to maintain the status quo to prevent the estate from being dissipated. They argue that if a stay is not granted, the Respondent may move to distribute or alienate the assets, which would cause them substantial and irreparable loss and render their intended appeal a mere academic exercise.
23. They maintain that this application has been brought without unreasonable delay following the Court of Appeal's recent decision and that it is in the interest of justice to allow the intended Appeal to be heard on its merits.
24. The Respondent- Mohammed Shabir Bhola, opposed the application vide his Replying Affidavit sworn on 22nd April, 2025. He strongly opposes the application for leave to appeal and stay of execution.
25. He begins by challenging the legal standing of the Applicants (Saheel Rashid Mughal and Arfan Rashid), characterising them as strangers to the suit who have failed to provide documentation proving their appointment as administrators of Rashid Mughal's estate. Furthermore, he argues that the court lacks the jurisdiction to grant a stay of execution because there is no valid notice of appeal currently in existence.
26. He highlights the extraordinary delay in this matter, noting that eleven years have passed since the judgment was delivered in 2014. He asserts that the applicants have sat on their rights and that their current move is a strategy to prolong the distribution of the estate indefinitely.
27. It is his case that the Applicants have failed to inform the court that their father received his entire share, squandered it, and now seeks to have a second bite of the cherry, which the court cannot allow. In addition, the court considered the facts and evidence, including an agreement dated 8th August 1996 of the deceased confirming he had no interest in the estate.
28. The administrator emphasises that the intended appeal has no chance of success and that the application fails to meet the legal requirements for a stay. Ultimately, he maintains that it is in the interest of justice to allow the long-awaited distribution of the estate to proceed without further hindrance.
29. In response to this Replying Affidavit, the 1st applicant, Saheel Rashid Mughal, swore a supplementary affidavit on 28th July, 2025. He confirms that he and his brother, Arfhan Rashid Mughal, are indeed the duly authorised legal representatives of their late father, Rashid Mughal. To substantiate this, he refers to a Grant Ad Litem issued by Ho, Lina Akoth on 19th April, 2024, in chief Magistrates court, Succession cause no. E097 of 2024, for that specific purpose.
30. He further points out that the administrator's counsel is well aware of their status, as both parties previously recorded and adopted a formal Consent Order regarding the substitution of the parties on



- 6th May, 2024. Through this clarification, he rebuts the administrator's claim that they are "strangers" to the proceedings and reaffirms their right to pursue the intended appeal.
31. On 15th April, 2025, Mohamed Shabir Bhola, represented by the firm of Mirugi Kariuki and Company Advocates, filed his application dated 14th April, 2025 and expressed under Section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules, seeking for Orders;-
1. That this Honourable Court be pleased to issue a Certificate of Confirmation of Grant as per the judgment of the Court delivered on 14th November 2014.
 2. The costs of this application be provided for.
32. The Respondent states that the matter traces back to a judgment delivered by the High Court on 14th November 2014 regarding the distribution of the estate. Despite the conclusion of the hearing and the delivery of the judgment over a decade ago, a formal Certificate of Confirmation of Grant was never issued to finalise the process.
33. The Respondent, who is the administrator of the estate, now states that the beneficiaries are collectively desirous of finalising the distribution of the assets. To facilitate this, he has proposed a distribution schedule that aligns with the court's 2014 findings, notably excluding Rashid Mughal and Mohammed Rafiq Mughal from the net intestate estate as they had allegedly already received their portions. He states that the properties are to be shared among four beneficiaries, being: Mohammed Shabir Bhola, Azra Kausar, Hazir Bibi, and Saira Bibi Tanweer. The parcels of land listed are: Maralal Plots, Nakuru Municipality Block 3/90, Rumuruti Farm LR. No. 5130, Pepsi Farm L.R. No. 2626, and Pepsi Farm LR No. 3249, to be shared equally among the four beneficiaries.
34. He states that the motor vehicles and Machinery; Toyota Land Cruiser KHL 469, Toyota Land Cruiser KUD 850, Peugeot KSF 065, Toyota Land Cruiser KTY 912, Mercedes Benz 80 S.E, Toyota Hilux, Motor Vehicle KKG 735, Morris Vehicle, Ford Model "A", Ford Perfect, Ford Vintage, Mazda Vintage, Chevrolet Vintage T9694, Chevrolet Vintage E1302, Chevrolet Vintage F1304, Machinery Spare Parts and generators to be sold and proceeds shared equally among the beneficiaries.
35. In conclusion, the Applicant states that it is just and necessary for the court to issue the Certificate of Confirmation of Grant to allow the beneficiaries to finally receive their respective shares and bring the long-standing succession cause to a close.
36. The 1st Intended Appellants/Applicants opposed that application vide Grounds of opposition dated 22nd July, 2025 and as follows;-
1. That there is currently pending before this Honourable Court the Summons dated 12th March 2025 seeking leave to appeal against the judgment delivered on 14th November 2014, which forms the very foundation upon which the Administrator's application is predicated.
 2. That it is a settled principle of law that where an application for leave to appeal is pending, the court should exercise caution in granting any orders that would finalise the matter and potentially render the intended appeal nugatory.
 3. That the doctrine of stay of proceedings dictates that the Administrator's summons, if granted, would violate this doctrine by confirming the grant while the legality or propriety of the underlying judgment is under challenge.



4. That the confirmation of grant is not a mechanical or administrative process but a judicial one that must take into account all relevant factors, including summons challenging prior determinations.
 5. That proceeding to confirm the grant without awaiting the determination of the application for leave to appeal would amount to denying them the right to be heard on a matter affecting their interest in the estate, in violation of Article 50(1) of *the Constitution* of Kenya, 2010.
 6. That this Honourable Court has the inherent power to preserve the status quo to prevent an abuse of its process and to uphold the ends of justice pending the determination of the summons dated 12th March 2025.
 7. That the Summons at hand is evidently brought in bad faith, against the interests of justice and is otherwise only ripe for dismissal with costs.
37. The Fourth Application was filed by the firm of Githinji, Kimamo and Company Advocates, for the 2nd Intended Appellant and expressed under Section 47 of the *Law of Succession Act* and Rules 49, 59 & 73 of the Probate & Administration Rules- Cap 160 Laws of Kenya and all other enabling Provisions of the Law. The same is seeking the following orders:-
1. That this Application be certified urgent and service be dispensed within at the first instance.
 2. The firm of Githinji, Kimamo & Co. Advocates be granted leave to act for the Applicant herein in place of Kiplenge & Kurgat Advocates.
 3. That pending inter-partes hearing of this application the Honourable Court be pleased to issue an order of temporary injunction to restrain the Respondent herein from executing the orders contained in the Judgement dated 14th November, 2014.
 4. That the original 2nd Intended Appellant, Mohammed Rafiq be substituted with Abdul Rahim Mohammed a legal representative of his estate.
 5. That this Honourable Court be pleased to grant leave to the Intended Appellants/Applicants to prefer an appeal to the Court of Appeal against its Judgement dated and delivered on 14th November, 2014.
 6. That pending the filing, hearing and determination of the Intended Appeal by the Applicant, the Honourable Court be pleased to issue an order of stay of the orders contained in the Judgement dated 14th November, 2014.
 7. The costs of this application be in the cause.
38. The Application is supported by the Grounds on the Face of the Summons and Supported by the Affidavit of Abdul Rahim Mohammed, sworn on even date. The Applicant states that the matter is extremely urgent because the Respondent has already taken steps to begin executing the judgment of the Court dated 14th November, 2014.
39. He contends that the court possesses unfettered discretion to grant the requested orders and asserts that the prayer for substitution is necessary to serve the interests of justice.
40. The Applicant further explains that although there is no specific statutory provision for such appeals, binding precedents establish that an appeal can lie from the High Court to the Court of Appeal with the necessary leave. He argues that such leave is typically granted when grounds for appeal merit serious



judicial consideration on a prima facie basis. Furthermore, he maintains that the court's discretion in these matters is underpinned by the constitutional right of appeal.

41. He claims that his right to equal protection and benefit of the law under Article 27 of *the Constitution* would be violated if the orders are not granted. Additionally, he asserts that the constitutional requirement for substantial justice under Article 159(2) demands that leave be granted.
42. The Applicant warns that without the opportunity to challenge the judgment on its merits, there is a high risk that the Respondent will be unjustly enriched due to legal technicalities.
43. He emphasises that in an inheritance dispute, the administration of justice would fall into disrepute if a family suffered a miscarriage of justice because of such technicalities.
44. In the supporting Affidavit, he stated that he is the son of the late Mohammed Rafiq, who passed away on 22nd October, 2021, and that he has since obtained a limited grant of letters of administration ad litem dated 2nd August, 2022, to represent his father's interest in this litigation.
45. He notes that the typed proceedings were only made available on 18th May, 2018, nearly four years after the judgment. It also clarifies that because Mohammed Rafiq was not named as a party in the original judgment despite having orders issued against him, he had to file a specific application just to be joined to the subsequent appeal in 2021.
46. He further states that the Administrator has appropriated the parcel of land known as LR. No 5130 Rumuruti. A fact which his advocate confirmed vide the letter of 16th April, 2025. Moreover, the Respondent allegedly authorised a third party, one Mr. Peter Wanyeki, to begin ploughing, planting, and managing this specific piece of land. The Applicant argues this is a malicious attempt to curtail his cultivation rights and a direct threat to the estate's integrity while the matter is pending in Court.
47. Lastly, he states that any delay in filing the application is not inordinate and has been sufficiently explained, and that granting the prayers will not prejudice the Respondent but will instead uphold the right of appeal.
48. The firm of Odhiambo and Odhiambo filed the last application for the 1st Applicants herein. The same is dated 27th November, 2025 and expressed under Section 42, 43, 71(3), and 83(g) of the *Law of Succession Act* Cap. 160 and Rule 40(2) of the Probate & Administration Rules, seeking Orders-
 1. That this application be certified as urgent and service be dispensed with in the first instance.
 2. That the Grant of Letters of Administration Intestate made to MOHAMMED SHABIR BHOLA, in this matter on 24.3.2011 and confirmed on 14th November, 2014 be revoked and or annulled for the reason that the decreed accounts and distributions within six(6) months of the date of judgement, the same has not taken place to date.
 3. The applicant and three others, other than MOHAMMED SHABIR BHOLA, be appointed administrators of the estate of the Late SADIQ MOHAMMED BHOLA(Deceased).
 4. The Respondent be ordered to render accounts of the estate as per the order of Justice Enyara Emukule of 14th November, 2014 upon his removal as an administrator.
 5. Upon granting prayers 2 and 3 above, the respondent be compelled to pay back all sums and losses he incurred on behalf of the estate.
 6. The court be pleased to declare the Respondent an intermeddler and, accordingly, convict and sentence him.



7. An order of injunction does issue against the respondents, their agents, assigns from selling, transferring, subdividing, alienating, cultivating, occupying, entering, trespassing, and or otherwise in any way dealing with LR No. 5130 RUMURUTI pending the hearing and determination of this Application.
8. Any such further and appropriate orders in the circumstances of this matter.
49. The application is premised on the supporting Affidavit sworn by Saheel Rashid Mughal on even date. He confirms his status as a beneficiary and the administrator of the estate of the late Rashid Bhola, who was a son and heir to the deceased, and provides a confirmed grant of letters of administration as proof of his standing. He further states that he has the express authority of the other applicants in this matter to swear the Affidavit on their behalf, affirming his competence to do so.
50. He recalls that the court delivered a ruling on 14th November 2014, which directed the distribution of the estate. However, he contends that the Respondent obtained this Confirmed Grant through the concealment of material facts and fraud, specifically by misrepresenting the assets and liabilities of the estate. He points out that while the Respondent was tasked with managing the estate, he has failed to provide a full and accurate accounting of the assets, including income generated from the various properties.
51. The deponent further alleges that the Respondent has breached his fiduciary duties by wasting and dissipating the estate's assets to the detriment of the other beneficiaries. A primary concern raised is the Respondent's unauthorised attempts to deal with or sell the property identified as LR No. 5130 Rumuruti.
52. On that basis, he asserts that a fresh, independent valuation of all estate properties is necessary because the values relied upon during the 2014 proceedings are now outdated and do not reflect current market realities.
53. He expresses a lack of confidence in the Respondent's ability to continue serving as the administrator, citing a persistent lack of transparency and professional conduct. He argues that the Respondent's removal is essential for the protection of the estate and suggests that he or another suitable person be appointed to manage the affairs of the deceased fairly. He emphasises that the situation is critical, as the continued management by the Respondent threatens to deplete the inheritance entirely before it can be rightfully distributed.
54. Lastly, he explains that the application is brought in good faith to preserve the status quo and protect the interests of all beneficiaries.
55. He urges the court to grant the temporary injunction and stay of execution to prevent any further alienation of property. He concludes by stating that these judicial interventions are the only way to bring finality to a matter that has remained unresolved in court for decades due to the respondent's alleged violations and mismanagement.
56. In addition, he filed a Supplementary Affidavit sworn on 3rd December, 2025. The deponent re-establishes his identity as a beneficiary and the administrator of the estate of the late Rashid Bhola, who was the son of the deceased, Mohammed Saddiq Bhola. He reaffirms his standing as one of the applicants in the ongoing matter and declares his competence to provide this further testimony under oath.
57. He brings to the court's attention a significant discovery made since the filing of the initial application, alleging that the Respondent has actively proceeded to sell parcels of land in Rumuruti that belong



to the deceased's estate. To support this claim, he refers to the annexed search document dated 26th November, 2025, showing the property has already been transferred to third parties.

58. The deponent states that he has been advised by his advocates that an administrator is legally prohibited from selling any portion of an estate without explicit court sanction, and even then, only for very specific and limited reasons. Consequently, he terms the Respondent's recent actions as a direct and serious violation of his statutory duties as an administrator.
59. For these reasons, he asserts that it is now a matter of extreme urgency for the court to intervene and issue the orders sought in the primary application. He argues that judicial action is necessary to halt the further alienation of estate property and to protect the inheritance from being completely depleted by the respondent's conduct.
60. Lastly, he states that he has offered this supplementary information to emphasise the high stakes involved and to justify the need for the court to grant the prayers for stay and removal of the administrator.

Zahida Mughal's Submissions

61. The Applicant identifies two issues for the Court:-
 - i. Whether the Respondent's Appeal (NAKURU COA CA 107 OF 2018) was filed on time.
 - ii. Whether that Appeal would be rendered nugatory.
62. The Applicant argues that his pending appeal would be prejudiced by the current application. The Applicant points out that the Memorandum of Appeal is dated 13th June 2018, while the judgment being appealed was delivered on 14th November 2014 and therefore, this delay is unexplained and contrary to Section 79G of the Civil Procedure Act, which provides:

“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 to the appellant 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 a good and sufficient cause for not filing the appeal in time.”
63. On the second issue, the Applicant submits that the Memorandum of Appeal does not mention LR 276/2516 RUMURUTI, hence the appeal would not be rendered nugatory if the application is allowed. To support this, the Applicant cites Attorney General v Matindi & 55 others (Civil Application E314, E300 & E309 of 2023 & E296 of 2022 (Consolidated)) [2023] KECA 1475 (KLR), where the Court held:

“... Whether or not an appeal will be rendered nugatory is determined on a case by case basis depending on the peculiar circumstances of the case. (See Reliance Bank Ltd v. Norlake Investments Ltd (2002) 1 EA 227). But ordinarily, the Court will grant relief under rule 5(2) (b) if what is apprehended cannot be undone once it happens or cannot be undone without undue hardship or expense, or cannot be adequately compensated by award of damages.”
64. The Applicant therefore concludes that the Respondent's apprehension is misplaced since the appeal does not concern the Rumuruti property.



Mohammed Shabir Bhola's Submissions

65. The Respondent's submissions are on whether the application discloses sufficient cause to warrant the grant of leave to appeal. He argues that leave to appeal is a mandatory jurisdictional threshold, not a procedural nicety. They contend that the Applicants are seeking leave more than a decade after the judgment was delivered on 14th November 2014, far exceeding the statutory 14-day window for filing a Notice of Appeal or seeking leave. Furthermore, the Respondent asserts that the Applicants' previous appeal was already dismissed for lack of leave, and they are now improperly attempting to relitigate a settled matter without first seeking leave to file a fresh Notice of Appeal out of time. To support this, reliance was placed on the case of ;Rhoda Wairimu Karanja & Another v Mary Wangui Karanja & Another [2014] eKLR, that held that;-

“...under the *law of Succession Act*, there is no express automatic right of appeal to the Court of Appeal; that an appeal will lie to the Court of Appeal from the decision of the High Court exercising original jurisdiction with leave of the High Court or where the application for leave is refused with leave of this Court.....”.

66. Further reliance was placed on Mughal & Rashid (Suing as the legal representatives of the Estate of the Late Rashid Mughal) & Another v Bhola (Civil Appeal No. 41 of 2018) [2025] KECA 420 (KLR), that held that;-

“...in addition to the constitutional and statutory requirement that the appeal be provided under the law, there is yet another two fold requirement: first, the existence of a decision of the High court; and, second, where leave to appeal is required, it has been sought and obtained in the first instance, and if leave to appeal has been refused, it is applied and granted by this Court. It is important to stress that the right to appeal to this Court is neither automatic, nor absolute. This is because an appeal must lie to this Court under any law and where leave is a prerequisite, it must be sought and obtained. Newlands Surgical Clinic (Pty) Ltd vs. Peninsula Eye Clinic (Pty) Ltd 2015 (4) SA 34 SCA; [2015] 2 All SA 322 (SCA) para 13, “Leave to appeal...constitutes what has become known, particularly in administrative law parlance, as a jurisdictional fact. Without the required leave, this court simply has no jurisdiction to entertain the dispute.”

67. On whether the prayer for substitution of the original 2nd Intended Appellant is tenable in law, the Respondent submits that because the primary prayers for leave to appeal fail due to procedural non-compliance, the prayer for substitution also collapses. They argue that there is no valid, subsisting appellate process to anchor a substitution.

68. On whether there is a proper basis for a stay of execution, the Respondent contends that the Applicants have failed to establish a basis for a stay of execution. They argue that the Applicants have not demonstrated that they would suffer substantial loss, have not offered security for costs, and have failed to explain the decade-long delay in seeking this relief.

69. On who should bear the costs of the application, it was argued that while the text provided concludes before detailing the final argument on costs, the Respondent generally requests that the application be dismissed in its entirety with costs awarded to them.

70. Regarding the Application dated 14th April, 2025, the Respondent submits in support of confirmation of the Grant. He argues that the succession process, which began nearly thirty years ago, reached its substantive conclusion with the 2014 judgment and therefore, the current application is a procedural



necessity to give effect to that judgment. The Respondent contends that the Applicants are using hollow and procedurally defective premises, specifically a non-existent appeal, to keep the estate in a state of indefinite limbo.

71. On whether the Certificate of Confirmation of Grant should issue, the Respondent submits that the court's primary duty is to facilitate the final distribution of the estate to the beneficiaries. Since the judgment was delivered over a decade ago and has never been set aside or stayed by a court of competent jurisdiction, there is no legal impediment to extracting the Certificate of Confirmation. He argues that the Applicants' opposition based on a Notice of Appeal from 2014 has no legal utility because the subsequent appeal was struck out as seen in *Mughal & Rashid v. Bhola* [2025] KECA 420 (KLR): where the court of Appeal held:-

“...the right to appeal to this Court is neither automatic, nor absolute... where leave is a prerequisite, it must be sought and obtained.”

72. Further reliance is placed on *Rhoda Wairimu Karanja & Another v. Mary Wangui Karanja & Another* [2014] eKLR to reinforce that under the *Law of Succession Act*, an appeal from the High Court to the Court of Appeal requires formal leave.
73. On finality of litigation and the Interest of Beneficiaries, the Respondent emphasises the doctrine of finality, arguing that it is against the interests of justice for a succession cause to remain open for three decades. He submits that the beneficiaries' rights continue to hang in the balance solely due to the dilatory tactics of the Respondents. In support of this argument, he cites the case of *Independent Electoral and Boundaries Commission v. Jane Cheperenger & 2 others* [2015] eKLR, regarding the principle of interest reipublicae ut sit finis litium that requires, in the interest of the state, that there be an end to litigation.
74. In conclusion, the Respondent submitted that the application is a red herring because they have failed to take the threshold step of obtaining leave to appeal. Consequently, there is no valid appellate process to justify staying the confirmation. The Applicant urges the Court to finally give effect to the 2014 judgment and bring an end to the decades-long dispute by issuing the Certificate of Confirmation of Grant.

Saheel Rashid Mughal & Arfhan Rashid's Submissions

75. The Applicants submitted on whether or not the Summons dated the 13th December 2022 has merit. On that basis, he argued that this Court should note that the summons at hand seeks to have a Certificate of Confirmation of Grant issued with the effect of distributing an asset to third parties. He argued that section 55 of the *Law of Succession Act* provides that there can be no distribution of capital assets before the confirmation of a grant.
76. It was submitted that the procedure for Confirmation of Grants is provided for under Section 71 of the *Law of Succession Act* where it states in part that:“ Confirmation of grants (1)After the expiration of a period of six months, or such shorter period as the court may direct under subsection (3), from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower the distribution of any capital assets”,) while Rules 40 and 41 of the Probate and Administration Rules provide for the making of an application for Confirmation of Grant and the procedure for hearing the same.



77. It provides in Rule 40 (1) that the application shall only be made by the holder of a grant that has not been confirmed. The same is couched in the following terms:-

“ 40 (1) Where the holder of a grant which has not been confirmed seeks confirmation of the grant he shall apply for such confirmation by summons in Form 108 in the cause in which the grant was issued, supported by an affidavit in Form 8 or 9 exhibiting the grant together with an estate duty compliance certificate or other satisfactory evidence that no estate duty is payable and setting out the full names of the deceased person to whose estate the grant relates, and he shall satisfy the court that no application under Part III of the Act is pending.”

78. Further, Rule 40 (8) provides that an application for Confirmation of Grant shall be accompanied by a consent form where all the beneficiaries and dependants give their consent, in writing, to the confirmation of the said grant. It is worded as follows:-

“ 40 (8) Where no affidavit of protest has been filed the summons and affidavit shall without delay be placed by the registrar before the court by which the grant was issued which may, on receipt of the consent in writing in Form 37 of all dependants or other persons who may be beneficially entitled, allow the application without the attendance of any person; but where an affidavit of protest has been filed or any of the persons beneficially entitled has not consented in writing the court shall order that the matter be set down as soon as may be for directions in chambers on notice in Form 74 to the applicant, the protester and to such other persons as the court thinks fit.”

79. The Respondent submitted that there is no room in the *Law of Succession Act* and the Probate and Administration Rules where a third party, not being the Administrator of the estate in question, may apply for confirmation of a grant in the manner proposed by the Summons at hand. Secondly, he noted that the Applicant herein has failed to obtain the consent of the dependants and beneficiaries to support the making of the instant Application. Further, despite there being a total of 6 dependants in the instant estate, the Applicant has involved only 2.

80. This move, according to the Applicant, flies in the face of the right to a fair hearing as enshrined in Article 50 (1) of *the Constitution* of Kenya 2010. This, therefore, makes the Summons dated the 13th December 2022 ripe for dismissal. To support their argument, reliance was placed on the case of *Richard Nchapi Leiyagu –v- IEBC & 2 others* [2013] eKLR, where the Court of Appeal held as follows on the issue of the right to be heard:-

“The right to a hearing has always been a well-protected right in our Constitution and is also the cornerstone of the rule of law. This is why even if the courts have inherent jurisdiction to dismiss suits, this should be done in circumstances that protect the integrity of the court process from abuse that would amount to injustice and at the end of the day there should be proportionality.”

81. They submitted that the Grant of Probate issued to the Administrator herein was confirmed vide the Judgment delivered by Hon. Justice Anyara Emukule on the 14th November 2014. A mode of distribution of the assets to the respective dependants was captured therein. The Summons at hand is akin to seeking the review of the decision made by the Hon. Anyara Emukule, whereas the same is pending appeal. It is thus their argument that the Application is a clear abuse of the Court process. To support this, he relied on the case of *In the case of Stephen Somek Takwenyi & Another vs. David*



Mbuthia Githare & 2 Others Nairobi (Milimani) HCCC No. 363 of 2009, where Kimaru, J (as he then was), while dealing with the issue of abuse of the process of the Court, stated as follows:-

“This is a power inherent in the court, but one which should only be used in cases which bring conviction to the mind of the court that it has been deceived. The court has an inherent jurisdiction to preserve the integrity of the judicial process. When the matter is expressed in negative tenor it is said that there is inherent power to prevent abuse of the process of the court. In the civilised legal process it is the machinery used in the courts of law to vindicate a man’s rights or to enforce his duties. It can be used properly but can also be used improperly, and so abused. An instance of this is when it is diverted from its proper purpose, and is used with some ulterior motive for some collateral one or to gain some collateral advantage, which the law does not recognise as a legitimate use of the process. But the circumstances in which abuse of the process can arise are varied and incapable of exhaustive listing. Sometimes it can be shown by the very steps taken and sometimes on the extrinsic evidence only. But if and when it is shown to have happened, it would be wrong to allow the misuse of that process to continue. Rules of court may and usually do provide for its frustration in some instances. Others attract res judicata rule. But apart from and independent of these there is the inherent jurisdiction of every court of justice to prevent an abuse of its process and its duty to intervene and stop the proceedings, or put an end to it”.

82. On who should pay costs, it was submitted that should the Summons be dismissed in their favour, they will inevitably be entitled to costs. In support of that argument, they cited Republic vs. Rosemary Wairimu Munene, Ex-Parte Applicant vs. Ihururu Dairy Farmers Cooperative Society Ltd, where the Court held as follows:-

“The issue of costs is the discretion of the court as provided under the above section. The basic rule on attribution of costs is that costs follow the event. It is well recognized that the principle costs follow the event is not to be used to penalize the losing party; rather it is for compensating the successful party for the trouble taken in prosecuting or defending the case.”

Analysis and determination

83. This Court has carefully considered the five applications before this Court, the affidavits in support and in opposition thereto, the Grounds of Opposition and the rival submissions by counsel. It is evident that the applications are intertwined, raising both procedural and substantive questions touching on the administration, distribution, and finalisation of the estate of the deceased. For purposes of clarity and orderly determination, the issues for determination herein are as follows:-

1. Whether Zahida Mughal’s application on ownership/distribution of LR 276/2516 is merited.
2. Whether leave to appeal and stay of execution should be granted.
3. Whether the Certificate of Confirmation of Grant should issue.
4. Whether leave should be granted to the firm of Githinji, Kimamo & Company advocates to come on record on behalf of Kiplenge & Kurgat and Company Advocates.
5. Whether the confirmed grant should be revoked and the administrator removed.
6. Whether the MOHAMMED RAFIQ(2nd Intended Appellant) be substituted with ABDUL RAHIM MOHAMMED a legal representative of his estate.



7. Whether preservative orders should issue pending resolution of the dispute
84. On the first issue, that is, whether the Summons dated 13th December 2022 is merited. This court notes that the Application by Zahida Mughal principally seeks a determination that property known as IR 276/2516 Rumuruti does not form part of the estate of the deceased but instead belongs to the estate of Mohammed Latif Bhola (her father), and further seeks confirmation of its distribution in favour of herself and her sister.
85. The starting point is the law governing confirmation and distribution of estates. Under Section 71 of the *Law of Succession Act*, confirmation of a grant is the process through which the court ascertains the beneficiaries and determines their respective shares. Rule 40 of the Probate and Administration Rules further requires that such an application be made by the holder of a grant and be supported by the consent of all beneficiaries.
86. In the present matter, the Applicant is not the administrator of the Deceased's estate, nor has she demonstrated that she acts with the requisite authority or the collective consent of the beneficiaries. It is pertinent to observe that the Applicant and Nasreen Malik, by virtue of a Rectified Certificate of Confirmation of Grant issued on 2nd June 2017, were already bequeathed the subject parcel of land as part of the Estate of Mohammed Latif Bhola. It is, therefore, evident that the estate from which the Applicant derived her interest in the subject property is a distinct legal entity from the estate currently before this Court. Consequently, the Applicant seeks to claim property under the auspices of one estate that has already been adjudicated under another Estate.
87. Further, the orders sought, though framed as rectification and confirmation, are in substance a redistribution of estate property and a determination of ownership as between two distinct estates. Such a determination cannot properly be undertaken within the confines of the present application without affording all affected parties an opportunity to be heard, and without a proper evidentiary basis.
88. The alleged agreement between the beneficiaries of the two estates has been vehemently disputed. No cogent documentary proof has been placed before the Court to demonstrate that such an agreement was reached and adopted by all relevant parties. In the absence of such proof, the Court cannot sanction a redistribution of estate assets on the basis of contested assertions.
89. Moreover, the estate herein was the subject of a judgment delivered on 14th November 2014, which determined the mode of distribution. To the extent that the present application seeks to vary or revisit that determination, it amounts to an indirect attempt to review or reopen the judgment without following the laid down legal procedures.
90. In the circumstances, I find that the Summons dated 13th December 2022 is incompetent and devoid of merit, and the same is hereby dismissed.
91. On Whether leave to appeal and stay of execution should be granted. The Applicants seek leave to appeal against the judgment delivered on 14th November 2014, as well as an order of stay of execution.
92. This Court is aware that the Court of Appeal, in various cases, including the case of Rhoda Wairimu Karanja & Another v Mary Wangui Karanja & Another [2014] KECA 255 (KLR), held that a party seeking to appeal a succession matter to the Court of Appeal ought to seek leave of the Court first. Conversely, Re Estate of R.B.C. [2023] KECA 1553 (KLR), the Court of Appeal adopted the view that leave was not necessary for an appeal arising from a review application under the Probate and Administration Rules.



93. However, on 31st March, 2026, this year, the Supreme Court in *Wandi v Muchira* (Suing as the Administrator Ad Litem of Jane Muthoni Muchira) (Petition E029 of 2024) [2026] KESC 29 (KLR), removed the need for seeking such leave and stated that;-

“ 54. We therefore come to the inevitable conclusion that there is no legal basis for imposing a requirement of leave as a prerequisite for lodging an appeal to the Court of Appeal against a decision of the High Court rendered in the exercise of its original jurisdiction in a succession matter. Such a requirement, not being anchored in either *the Constitution* or statute, cannot properly be sustained... 59. Accordingly, and in the absence of any express statutory limitation, we hold that a decision of the High Court rendered in the exercise of its original jurisdiction in a succession matter is appealable to the Court of Appeal as of right. Any contrary position would be inconsistent with *the Constitution*'s transformative vision of a fair, accessible, and non-discriminatory system of justice.”

94. From this decision, the Applicants no longer require any leave to appeal to the Court of Appeal.

95. In respect to the prayer for stay, Applications for stay of execution are governed by Order 42 rule 6(2) of the Civil Procedure Rules, which provides:

“No order for stay of execution shall be made under subrule (1) unless—(a)the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and(b)such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”

96. An order to stay execution pending appeal presupposes the existence of an appeal. The filing of an appeal is a condition precedent to the exercise of this court's appellate jurisdiction under Order 42 Rule 6 (1) of the Civil Procedure Rules. Although the provision does not expressly say so, this can be inferred from the rule. The Court of Appeal in *Abubaker Mohamed Al-Amin v Firdaus Siwa Somo* [2018] eKLR concurred with Meoli, J. in *Rosalindi Wanjiku Macharia vs. James Kiingati Kimani* (Suing as the Legal Representative of the Estate of Martin Muiruri (Deceased)) [2017] eKLR , where she stated;

“In my view, even if the prayer to appeal out of time had been granted, and the said prayer for stay pleaded in the Motion, it would still have failed for the reason that the existence of an appeal is a condition precedent to the exercise of this court's discretion under Order 42 Rule 6 (1) of the Civil Procedure Rules.

97. In light of the foregoing, and noting that the Appeal previously filed in the Court of Appeal was struck out, there is currently no subsisting Appeal upon which a prayer for stay of execution can be anchored. It is a settled principle of law that a stay of execution pending appeal cannot exist in a vacuum; it must be predicated upon a valid, existing appeal. Consequently, this Court finds the prayer for stay of execution to be legally untenable and devoid of merit. Consequently, the application dated 12th March 2025 fails in its entirety.

98. On whether the grant should be revoked and the administrator removed, the Applicants seek revocation of the grant under Section 76 of the *Law of Succession Act*, alleging fraud, concealment of material facts, and mismanagement of the estate.



99. Revocation of a grant is a serious remedy, and the burden lies on the applicant to strictly prove the grounds set out under Section 76. For Emphaise Section 76 of the *Law of Succession Act* provides that:-

“Revocation or annulment of grant A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

- (a) that the proceedings to obtain the grant were defective in substance;
- (b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
- (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
- (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either—
 - (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
 - (ii) to proceed diligently with the administration of the estate; or
 - (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
- (e) that the grant has become useless and inoperative through subsequent circumstances.”

100. The Applicants move this Court for the revocation of the Grant, predicated primarily upon the administrator’s flagrant failure to manage the Estate with the requisite due diligence. It is contended that the Respondent has engaged in the waste of Estate properties, thereby exposing the assets to the risk of total dissipation. In support of this averment, the Applicant produced a Certificate of Official Search dated 26th November 2025, which shows that a portion of the Estate’s property has been alienated and transferred to third parties. Furthermore, the Applicants tendered two Sale Agreements indicating that the Administrator has leased or otherwise encumbered Estate properties in favour of third parties. Notably, these allegations remain uncontroverted.

101. Beyond the allegations of waste, the Applicants cite the Respondent’s persistent and wilful failure to render a true and just account of the administration of the Estate.

102. The duties the Administrator has failed to undertake are not merely administrative but a statutory mandate anchored under Section 83 (e) and (g) of the *Law of Succession Act*, which provides that:-

“Personal representatives shall have the following duties— (e) within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account; ...(g) within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in



respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration.”

103. The record reflects that Judgment was rendered in 2014, with the subsequent appeal filed in 2018. While the Court acknowledges the intervening years during which the appeal remained pending, such litigation did not absolve the Administrator of his primary fiduciary obligations.
104. Pursuant to the *Law of Succession Act*, an administrator is mandated to render a full accounting and complete the administration of the Estate within six months of the confirmation of the Grant. This statutory timeline was neither met nor was an extension sought, representing a manifest failure to discharge his duties as required.
105. The totality of the evidence confirms that the Respondent/Administrator has failed to administer the Estate with the diligence and transparency required by law. This dereliction of duty has become particularly pronounced following the demise of the Co-administrator, leaving the Estate vulnerable to mismanagement. Consequently, the Court finds that the Respondent is no longer a fit and proper person to manage the Estate affairs. The Grant issued to him is hereby revoked.
106. On whether Mohammed Rafiq should be substituted by Abdul Rahim Mohammed, a legal representative of his estate, this Court notes that Mohammed Rafiq, the 2nd Applicant, in this case has since died on 22nd October, 2021. However, with the Grant having been revoked, the application for substitution of a beneficiary as sought in the Application dated 29th April, 2025, is untenable. It is a settled principle of law that a revoked grant is rendered null and void; consequently, any applications or proceedings predicated upon that Grant lose their legal foundation.
107. Regarding the request for injunctive and preservative orders, the Applicants seek to restrain any dealings with the property known as LR No. 5130 Rumuruti. The principles governing the grant of an interlocutory injunction are well-settled under by the case of *Giella v. Cassman Brown & Co. Ltd* [1973] EA 358, which requires an applicant to establish a prima facie case with a probability of success, demonstrate that they would suffer irreparable harm that cannot be compensated by damages, and, where the court is in doubt, show that the balance of convenience tilts in their favour.
108. However, having already declined the application for substitution following the abatement of the suit against Mohammed Rafiq, it follows that Abdul Rahim Mohammed is not properly before this Court. Consequently, the prayer for injunctive relief is devoid of a legal substratum. In the absence of a competent party on record to sustain the underlying claim, the application for an injunction is legally untenable and is hereby disallowed.
109. Regarding the prayer for the issuance of a Certificate of Confirmation of Grant, the Respondent has moved this Court via the Summons dated 14th April 2025 to give effect to the Judgment delivered on 14th November 2014. It is a matter of record that this Court rendered a final adjudication on the distribution of the estate. That judgment remains intact, having neither been set aside nor stayed by any Court of competent jurisdiction. Furthermore, the Intended Appeal to the Court of Appeal was struck out for want of leave, thus removing any procedural impediment to the finalisation of this estate under the said judgment.
110. However, having found the Respondent/Sole Administrator liable for wasting the Estate Properties, the Grant of Letters of Administration issued to him having been revoked, then the issue of issuance of Certificate of Confirmation of Grant is untenable. The estate now stands in abeyance, and the mandate to complete the administration must vest in newly appointed administrators.



111. In the premises, and guided by the overriding objective to achieve substantive justice as fortified by Rule 73 of the Probate and Administration Rules, this Court finds it prudent to allow the beneficiaries to move with requisite speed to petition for the appointment of new administrators to bring this succession cause to its logical conclusion.

112. In conclusion, this Court makes the following Orders:-

1. The Summons dated 13th December 2022, 12th March 2025, 14th April 2025 and 29th April, 2025 are hereby dismissed.
2. The Grant of letters of administration dated 7th August 1998 and the Confirmation of Grant dated 6th December 2000 are hereby revoked.
3. Within 30 days from the date of this Ruling, the Beneficiaries shall appoint new Administrators for the administration of this Estate.
4. Each party shall bear their own costs, given the nature of this dispute as a family matter.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 22ND DAY OF APRIL, 2026.

PATRICIA GICHOHI

JUDGE

In the presence of:

Ms Ingati h/b for Mr. Biko Saheel & Arfhan

Ms Oseko h/b for Administrator /Respondent

Mr. Mwathe for Mr Kimamo for the 2nd Applicant/Intended Appellant

Mr. Mutai for 2nd Intended Applicant/Appellant

Erickson, Court Assistant

