



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 955 OF 2013
IN THE MATTER OF THE ESTATE OF ROGER BRYAN
ROBSON (DECEASED)

PLOVERS HAUNT LIMITED 1ST
OBJECTOR/APPLICANT
AGNES KAGURE KARIUKI 2ND
OBJECTOR/APPLICANT

VERSUS

GUY SPENCER ELMS [*Suing as the personal
representative of the estate of the late Roger*

Bryan Robson (Deceased)] 2ND
RESPONDENT

RULING

1. This ruling relates to the application dated **3rd July, 2025** filed by the Applicant, Thomas Murima Mutaha, seeks for **ORDERS THAT:**

1. **This honourable court be pleased and hereby grants leave to the Applicant to appeal against the judgment delivered on 19th June, 2025.**
2. **The costs of and incidental to this application be provided for.**
2. The application is based on the grounds thereof and supported by affidavit and further affidavit sworn by Thomas Murima Mutaha on **3rd July, 2025** and **13th October, 2025**.
3. He avers *inter alia* that he is a director of the 1st Objector/ Applicant, Plovers Haunt Limited, and is therefore competent to swear the affidavit on its behalf. The Applicant is dissatisfied with the judgment delivered on **19th June, 2025** and intends to challenge the same before the Court of Appeal. In support thereof, he annexes a Notice of Appeal dated **19th June, 2025** and lodged on **20th June, 2025**, together with correspondence requesting certified copies of the judgment, decree, proceedings and proof of payment of the requisite court fees.
4. He further states that in probate and administration matters there is no automatic right of appeal to the Court of Appeal and that leave of the court is therefore necessary. He contends that the court retains discretion

to permit a litigant to exercise the constitutional right of appeal and urges the court to exercise that discretion in favour of the Applicant .

5. He maintains that the intended appeal raises arguable issues with high chances of success, as reflected in the annexed draft memorandum of appeal, which challenges this Court's findings regarding whether the Applicant 's properties formed part of the deceased's estate and whether the revocation summons had been properly determined.
6. He further avers that the application was filed expeditiously and without unreasonable delay, and that unless leave is granted, the Respondent may proceed to distribute or dispose of properties alleged to belong to the Applicant, thereby occasioning substantial and irreparable loss.
7. He states that the Applicant risks losing its property without the opportunity for appellate review and that no prejudice would be suffered by the Respondents since they would still have an opportunity to respond to the appeal.
8. The annexures to the supporting affidavit include the notice of appeal, correspondence to the Deputy Registrar requesting certified copies of proceedings and judgment,

a court receipt evidencing payment for copies and a draft memorandum of appeal.

9. The draft memorandum faults the impugned judgment for allegedly failing to determine whether the Applicant 's properties were available for distribution as estate assets, for allegedly declining jurisdiction on issues relating to the Applicant's objections, and for failing to revoke the grant issued to the 1st Respondent.
10. In the further affidavit he responds to the 2nd Respondent's replying affidavit opposing the application for leave to appeal. He reiterates that he is a director of the Applicant company and competent to depose on its behalf. He disputes the Respondent's challenge to his *locus standi* and capacity, stating that he had previously sworn affidavits and appeared in court on behalf of the company during the impugned proceedings without objection from the Respondents.
11. He further clarifies that the dispute before the court does not concern the determination of the rightful directors of Plovers Haunt Limited but rather whether property registered in the company's name could properly be treated as part of the deceased's estate for purposes of distribution. He states that the impugned judgment dismissed the objection to inclusion of the company's

property as estate property and that the intended appeal merely seeks appellate guidance on that question.

12. He maintains that any disputes relating to directorship should be ventilated before the appropriate forum. On the issue of delay, he explains that judgment was delivered on **19th June 2025**, after which instructions were immediately issued to lodge a notice of appeal. He states that counsel later advised that leave to appeal was necessary in succession matters and that although the application had been uploaded on **13th July, 2025**, payment of filing fees was inadvertently delayed by clerical oversight within the advocates' office.
13. He avers that payment was eventually made on **29th July, 2025** and argues that the delay of approximately fifteen days in payment was neither intentional nor inordinate. He further contends that the delay constitutes a curable procedural lapse attributable to counsel's staff and should not be visited upon the Applicant. He reiterates that the application was filed within the sixty-day period available for instituting an appeal after lodging a notice of appeal. He asserts that the intended appeal is brought in good faith to safeguard the Applicant's property rights and to obtain a second opinion from the Court of Appeal on whether property registered in a

company's name may be distributed as part of a deceased shareholder's estate.

14. He further maintains that the Respondents have not demonstrated any prejudice they would suffer if leave to appeal is granted. He therefore urges the court to allow the application in the interests of justice and for the benefit of the estate.
15. The application is opposed vide replying affidavit sworn by Guy Spenser Elms on **15th September, 2025**.
16. He avers *inter alia* that he challenges both the competence of the application and the authority of the deponent, Thomas Murima Mutaha, to act on behalf of Plovers Haunt Limited. He states that he is the sole executor of the deceased's estate and is duly authorized to swear the affidavit. He avers that Thomas Mutaha is neither a director nor a shareholder of Plovers Haunt Limited and therefore lacks the capacity to swear affidavits or institute proceedings on behalf of the company.
17. In support of this assertion, he annexes records from the Registrar of Companies showing the company's directors and shareholders, which do not include Thomas Mutaha. He further states that during the impugned proceedings Thomas Mutaha never furnished any statutory or official

documentation proving directorship or membership in the company.

18. He contends that the genuine directors of the company passed a board resolution on **29th August, 2025** disowning Thomas Mutaha and the firm of Nchogu, Omwanza & Nyasimi Advocates, describing them as imposters with no authority to represent the company. The annexed board resolution asserts that the company had never appointed the said persons to act on its behalf and repudiates all instructions allegedly issued by them in relation to the succession proceedings and the disputed property.
19. He also disputes the Applicant 's assertion that the application for leave to appeal was filed without delay. He states that judgment was delivered on **19th June, 2025** and that the Objectors filed a notice of appeal without leave despite knowing that leave was required in succession proceedings.
20. He further avers that the present application was only paid for and formally filed on **29th July, 2025**, more than a month after judgment, despite the fact that it had allegedly been uploaded on the e-filing portal earlier. He annexes receipts and screenshots from the Judiciary e-filing portal to demonstrate the dates of payment and filing.

21. He contends that the application is therefore incompetent and was filed out of time. He maintains that the Objectors have no legitimate claim over the properties remaining in the name of Plovers Haunt Limited and accuses them of frustrating administration of the estate through frivolous litigation.
22. He further states that the estate has suffered substantial delay, loss and dissipation of wealth due to the prolonged objections and related disputes over the years. According to him, neither the deceased nor Thomas Mutaha had any shareholding or directorship in Plovers Haunt Limited at the time material to the proceedings, and therefore the Objectors lack any legal standing to seek the orders sought.
23. He also references related proceedings filed in the Court of Appeal seeking to strike out the notice of appeal lodged by the Objectors. The annexed application argues that the notice of appeal was defective because it did not specify the part of the judgment being challenged, had not been served within the prescribed seven days, and had been filed without the requisite leave of the court. The supporting affidavit to that application states that the delay and procedural defects have prejudiced administration of the estate and prolonged litigation concerning the deceased's assets.

24. Additionally, the affidavit annexes the impugned judgment delivered on **19th June, 2025**. The judgment recounts the history of the succession proceedings, the objections raised by Plovers Haunt Limited and Agnes Kagure Kariuki, and the *viva voce* evidence presented by both sides. The evidence summarized in the judgment included allegations that the disputed properties and shares had been fraudulently transferred, competing expert opinions regarding signatures on the deceased's Will and conveyancing documents, and testimony from advocates, document examiners, and family members concerning the deceased's intentions and mental state.
25. The judgment further considered the parties' written submissions and authorities concerning company law, testamentary capacity, validity of Wills, locus standi in succession proceedings, and the distinction between probate jurisdiction and disputes concerning ownership of land or shares.
26. The court held that the primary issue for determination was the validity of the deceased's will and found that the will met the requirements of sections **5** and **11** of the Law of Succession Act. The court concluded that there was insufficient evidence to establish forgery, coercion or lack of testamentary capacity and observed that disputes relating to ownership of properties and shares were

matters better suited for determination before the Environment and Land Court or the Commercial Division of the High Court.

27. Ultimately, the Court found that the Objectors had failed to prove the objections dated **15th April, 2015** and **16th March, 2017** on a balance of probabilities and dismissed the objections with costs to the Respondent. He relies heavily on those findings to argue that the present application for leave to appeal is frivolous, lacks merit and is intended merely to delay final administration of the estate.
28. The Applicant has filed written submissions dated **21st October, 2025**. The Applicant's written submissions support the application dated **3rd July, 2025** seeking leave to appeal against the judgment delivered on **19th June, 2025**.
29. The Applicant recounts that it had previously filed summons for revocation of grant challenging the inclusion of **Land Reference No. 209/289/1/3** and **Commercial Bank of Africa Account No. 6604230017** among the assets of the deceased's estate. According to the Applicant, the central issue raised before this court was whether property owned and registered in the name of a limited liability company could lawfully

form part of the estate of a deceased shareholder or director for purposes of succession and distribution.

30. The Applicant contends that the impugned judgment effectively affirmed that the company's properties were available for distribution within the estate, thereby necessitating an appeal. The submissions state that immediately after delivery of the judgment, the Applicant lodged a notice of appeal and requested certified proceedings and judgment, demonstrating its intention to pursue an appeal. The Applicant acknowledges that leave to appeal is required in succession matters and argues that the present application was therefore properly instituted.
31. Relying on authorities such as **Rhoda Wairimu Karanja v Mary Wangui Karanja** and **In re Estate of Wanga Ole Oiyie**, the Applicant submits that leave should ordinarily be granted where the intended appeal raises arguable issues deserving serious judicial consideration.
32. The Applicant argues that the intended appeal raises a substantial and unsettled legal question, namely whether assets registered in the name of a company may be treated as estate property merely because the deceased was associated with the company as a shareholder or director.

33. It is submitted that the executor himself admitted during cross-examination that the disputed land parcel and bank account belonged to the Applicant company. The Applicant contends that despite this, the trial Court nonetheless treated the assets as part of the deceased's estate and allowed them to remain listed in the summons for confirmation of grant.
34. The Applicant therefore maintains that the matter raises important questions of succession and company law warranting consideration by the Court of Appeal.
35. On the issue of delay, the Applicant submits that the application was filed within a reasonable period after judgment. It explains that after filing the notice of appeal and obtaining advice that leave was necessary, the supporting affidavit and application were uploaded onto the Judiciary e-filing portal on **13th July, 2025**.
36. However, due to inadvertence by counsel's staff, payment of filing fees was delayed until **29th July, 2025**. The Applicant characterizes this omission as an honest and curable mistake which ought not to be visited upon the litigant.
37. Relying on authorities including **Makhanu v Mutunguti Mutunguti** and **In re Estate of Siwanyang Ngilotich**, the Applicant argues that courts have previously excused

even longer delays where a party demonstrated good faith and an arguable appeal.

38. The Applicant further disputes the Respondent's challenge to its *locus standi*. It argues that the issue of directorship was never raised during the substantive objection proceedings and only emerged after judgment. The Applicant maintains that the executor admitted that the disputed properties belonged to the company and never treated the company as a stranger to the proceedings.
39. According to the Applicant, questions concerning who the legitimate directors of the company are, and under whose authority counsel acted, fall within the jurisdiction of the Commercial Court and not the Family Division. The submissions stress that the Applicant is not asking the succession court to determine company directorship disputes, but only to determine whether company-owned assets can properly be distributed as estate property.
40. In conclusion, the Applicant submits that it has demonstrated an arguable appeal involving an important legal issue touching on the relationship between company property and succession proceedings. It further maintains that the delay in filing was neither inordinate nor deliberate, but arose from an excusable mistake by counsel's office. The Applicant urges the court to exercise

its discretion in favour of granting leave to appeal so as to safeguard the constitutional right of appeal and prevent company property from being distributed through succession proceedings relating to a deceased individual. It is further argued that the Respondent has failed to demonstrate any prejudice that would arise if leave is granted.

41. The Respondent has filed written submissions dated **25th November, 2025**. He opposes the summons for leave to appeal dated **3rd July, 2025** and filed on **29th July, 2025**. The Respondent argues that there is no automatic right of appeal in succession matters and that any application for leave must strictly comply with the procedural requirements under the Court of Appeal Rules.
42. Relying on authorities including **Rhoda Wairimu Karanja v Mary Wangui Karanja** and **Mughal & Rashid v Bhola**, the Respondent submits that leave applications must be made within fourteen days of the impugned decision and that the present application was filed outside the prescribed period.
43. The Respondent raises a preliminary challenge to the *locus standi* of the 1st Objector/Applicant, contending that the entity described as **Plovers Haunt Limited** is non-existent. It is submitted that the registered company is **Plovers' Haunt Limited** with an apostrophe and

incorporation number **C.1384**, whereas the Applicant before the court is a distinct and unregistered entity. The Respondent argues that the discrepancy is not a mere typographical error but goes to the very legal existence and capacity of the Applicant.

44. According to the Respondent, no certificate of incorporation or CR12 was produced by the Applicant to establish its existence, while the Respondent produced official company records and a board resolution distancing the legitimate company from Thomas Murima Mutaha and the advocates acting for the Applicant.
45. The submissions further maintain that Thomas Murima Mutaha lacks authority to swear affidavits or institute proceedings on behalf of the registered company. The Respondent points out that previous affidavits filed during the proceedings had similarly challenged his authority and described him as a stranger to the company. It is argued that the actual directors of the company have expressly repudiated his actions and those of counsel purporting to act for the company.
46. Consequently, the Respondent contends that the present application has been brought by a non-existent and fraudulent entity lacking any legal standing before the court.

47. Relying on authorities such as **Alfred Njau v City Council of Nairobi, Stitching Rabo Bank Foundation v Ava Chem Ltd** and **Root Capital Incorporated v Tekangu Farmers Cooperative Society Ltd**, the Respondent submits that *locus standi* is a foundational jurisdictional issue. It is argued that once a court finds that a party lacks legal existence or standing, the proceedings cannot continue. The Respondent emphasizes that under Kenyan company law, the only conclusive proof of incorporation and legal existence is a certificate issued by the Registrar of Companies, which the Applicant has failed to produce.
48. On jurisdiction, the Respondent submits that the court lacks authority to entertain the application because it was filed outside the mandatory fourteen-day period stipulated under **Rule 41** of the Court of Appeal Rules. The Respondent notes that judgment was delivered on **19th June, 2025**, the application was uploaded on **13th July, 2025**, and payment was only made on **29th July, 2025**. It is argued that an application can only be deemed properly filed upon payment of filing fees, meaning that the present application was effectively lodged forty days after judgment.
49. Authorities including **In re Estate of the Late Evans Kamau Gathia** and **In re Estate of Erastus Muriungi**

Ngaruthi are cited for the proposition that failure to comply with the mandatory timelines renders such applications incompetent.

50. The Respondent additionally argues that the court should decline jurisdiction because there is already a pending application before the Court of Appeal challenging the competence of the notice of appeal filed by the objector. According to the Respondent, once a notice of appeal has been lodged and proceedings touching on its validity are pending before the appellate court, the High Court should not issue orders that may interfere with matters already seized by the Court of Appeal.
51. Authorities such as **Sammy Kuria Ndungu v Samuel Mbugua Ikumbu** and **Masore Nyangau & Co. Advocates v Supplies & Services Ltd** are relied upon to support the argument that the appellate court becomes seized of jurisdiction once a Notice of Appeal is filed.
52. Without prejudice to the foregoing objections, the Respondent further argues that the Applicant has failed to satisfy the threshold for grant of leave to appeal. It is submitted that the genuine company, Plovers' Haunt Limited (C.1384), has no intention of appealing against the judgment and is satisfied with the court's findings. The Respondent maintains that the disputed land parcel

and bank account are company assets belonging to the legitimate company and that the executor merely seeks an opportunity during confirmation proceedings to demonstrate which assets and liabilities properly belong to the estate.

53. The Respondent therefore characterizes the intended appeal as frivolous, convoluted and driven by personal grievances raised by Thomas Murima Mutaha rather than any genuine legal issue deserving appellate intervention.
54. In conclusion, the Respondent submits that the application is incompetent, time-barred and filed by a non-existent entity lacking *locus standi*. It is further argued that the pending proceedings before the Court of Appeal deprive the High Court of jurisdiction to entertain the matter and that the Applicant has failed to demonstrate any substantial legal question warranting leave to appeal. The Respondent therefore urges the court to dismiss the application with costs to the executor/Respondent.

ANALYSIS AND DETERMINATION

55. I have gone through the application, the responses thereto and the rival submissions; and wish to address them as follows:

56. The application before the court seeks leave to appeal against the judgment delivered on **19th June, 2025** in a succession cause concerning the estate of the late Roger Bryan Robson. The Applicant contends that the intended appeal raises substantial questions on whether property registered in the name of a limited liability company may properly be treated as part of a deceased shareholder's estate for purposes of succession and distribution. The Respondent opposes the application on grounds of want of *locus standi*, incompetence, delay and lack of jurisdiction.
57. The first issue for determination is whether leave to appeal is necessary in succession proceedings emanating from the High Court exercising original jurisdiction. Historically, courts held that there was no automatic right of appeal in succession matters and that leave had to be obtained before approaching the Court of Appeal.
58. However, the jurisprudential position has now been fundamentally altered by the **SUPREME COURT PETITION NUMBER E029 OF 2024: ELIUD MWENDIA WANDI VERSUS KEVIN WANJOHI MUCHIRA (Suing as the Administrator ad litem of JANE MUTHONI MUCHIRA)** where the court found as follows: ***"..... [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.... [55] This finding inevitably leads us to the closely related question of whether a decision of the High Court rendered in the exercise of its original jurisdiction in a succession matter is appealable as of right to the Court of Appeal. It is notable that Section 50(1) of the Law of Succession Act provides for an automatic right of appeal to the High Court from decisions of Resident Magistrates' Courts. The question that arises is whether, in matters originating before the High Court, a litigant should be placed in a less favorable position. To countenance such a distinction would raise concerns under Article 27(1) of the Constitution, which guarantees equality before the law and the equal protection and benefit of the law. It would be incongruous for litigants in succession matters to enjoy a right of appeal where proceedings originate in subordinate courts, but to be denied a corresponding avenue where

the High Court is the court of first instance... [58] Consequently, the Court affirmed that all litigants must be accorded equal access to the Court and that either party may approach the Supreme Court for review under Article 163(5), whether challenging the grant or refusal of certification. The Court thus adopted a broad interpretation of certification, holding that it encompasses both instances where a matter is certified as one of general public importance and where such certification is declined, thereby ensuring that access to justice is not unduly restricted. Guided by these constitutional dictates, we find that a restrictive interpretation that denies a right of appeal in succession matters originating from the High Court would undermine the values of equality and access to justice. [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..."

59. The Supreme Court in the decision above unequivocally held that there exists no legal basis for imposing leave as a prerequisite for appealing to the Court of Appeal from a decision of the High Court rendered in exercise of its original jurisdiction in succession matters. The Supreme Court further held that such decisions are appealable as of right and that any contrary position would offend **Articles 27** and **48** of the Constitution relating to equality before the law and access to justice.
60. In light of the foregoing pronouncement by the Supreme Court, I find that the present application for leave is overtaken by events and rendered unnecessary in law. The requirement for leave, which formed the foundation of both the application and the opposition thereto, no longer subsists.
61. Consequently, the Respondent's objections founded on **Rule 41** of the Court of Appeal Rules and the alleged failure to seek leave within fourteen days lose much of their force, because the intended appeal no longer depends on leave of the court.
62. Similarly, the arguments concerning whether the application for leave was uploaded or paid for within time become secondary, as the Applicant's substantive right of appeal exists independently of such leave. The filing of the Notice of Appeal on **20th June, 2025** sufficiently

manifested the Applicant's intention to challenge the judgment before the Court of Appeal.

63. The second issue concerns *locus standi* and the Respondent's contention that the Applicant is a non-existent entity distinct from Plovers' Haunt Limited (C.1384). While the Respondent has raised serious concerns regarding the authority of Thomas Murima Mutaha to act on behalf of the company and has annexed company records and board resolutions repudiating his authority, the court notes that the dispute before it does not presently concern substantive ownership of the disputed assets or the lawful directorship of the company. Those are matters falling squarely within the jurisdiction of the Commercial Division under company law principles.
64. More importantly, the impugned judgment itself recognized that disputes concerning ownership of properties and shares were better suited for determination before the Environment and Land Court or the Commercial Division of the High Court. The Applicant's complaint on appeal is therefore not frivolous on its face, as it questions whether company property can lawfully be treated as estate property in succession proceedings.
65. The Respondent's objections regarding the authenticity and existence of the Applicant company are nonetheless

not idle. The discrepancy between Plovers Haunt Limited and Plovers' Haunt Limited (C.1384) is a material issue requiring clarification before substantive relief can ultimately be granted in favour of the company.

66. However, at this interlocutory stage, and particularly in view of the constitutional right of appeal affirmed by the Supreme Court, the court is not persuaded that the dispute on directorship and corporate identity should summarily extinguish the Applicant's appellate rights without interrogation by the appellate court. The question whether Thomas Murima Mutaha validly acts for the company, or whether the Applicant entity legally exists, are matters capable of fuller ventilation before the appropriate forum or before the appellate court itself. They do not, in the peculiar circumstances of this case, warrant shutting out the intended appeal altogether.
67. Further, the intended appeal raises a serious and arguable issue regarding the interface between company law and succession law. The Applicant asserts that the trial court effectively sanctioned distribution of assets registered in the company's name as though they belonged to the deceased personally, notwithstanding admissions allegedly made during cross-examination that the disputed land parcel and bank account belonged to the company. Whether a deceased's shareholding or

association with a company can justify treatment of company-owned assets as estate property is not a trivial or purely academic question. It touches on the doctrine of separate corporate personality established in old aged **Salomon v Salomon & Co. Ltd** and raises legitimate concerns on the extent of probate jurisdiction over corporate assets. Such issues merit consideration by the Court of Appeal.

68. Accordingly, and guided by the Supreme Court's binding pronouncement above, I hold that leave to appeal is not required in appeals arising from the High Court's original jurisdiction in succession matters.
69. **In the premises the application has been overtaken by events and the same is thus spent.**
70. **Costs shall be in the cause.**

**Dated signed and delivered via video link at
Nairobi this 7th day of May 2026.**

**H K CHEMITEI
JUDGE**