



REPUBLIC OF KENYA



**Nderito v Nderito & 2 others (Civil Application E540 of 2024)  
[2025] KECA 259 (KLR) (21 February 2025) (Ruling)**

Neutral citation: [2025] KECA 259 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E540 OF 2024  
DK MUSINGA, F TUIYOT'T & GV ODUNGA, JJA  
FEBRUARY 21, 2025**

**BETWEEN**

**FLORENCE AUMA NDERITO ..... APPLICANT**

**AND**

**ANGELA NDERITO ..... 1<sup>ST</sup> RESPONDENT**

**JOHN KANGETHE NDERITO ..... 2<sup>ND</sup> RESPONDENT**

**ELIZABETH WARIARA NDERITO ..... 3<sup>RD</sup> RESPONDENT**

*(Being an application for stay of execution pending appeal of the entire Ruling of the High Court of Kenya at Nairobi (Chemitei, J.) dated 3rd October 2024 in HCFP&A No. 307 of 2006)*

**RULING**

1. The applicant's notice of motion dated 23<sup>rd</sup> October 2024 seeks ten prayers, among them being stay of execution of the ruling of Chemitei, J. dated 3<sup>rd</sup> October 2024 in Probate and Administration Case, HCFP&A 307 of 2006 pending hearing and determination of an intended appeal; stay of execution of distribution of the estate of the late Peter Charles Nderito pending hearing and determination of the intended appeal, and injunctive orders against the 1<sup>st</sup> and 2<sup>nd</sup> respondents to restrain them from selling, alienating or interfering in any way with LR No. 7741/285 and LR No. 7741/286 and the structures thereon pending hearing and determination of the appeal. The applicant also seeks leave to appeal against the entire ruling of the trial court aforesaid.
2. The application was opposed by the respondents, and both of them raised a preliminary issue to the effect that the applicant had not sought and obtained leave of the trial court to appeal to this Court from the impugned decision.



3. When the application came up for hearing, Ms. Eunice Lumallas and Mr. Mugambi Laichena appeared for the applicant, while Ms. Chepkwony and Mr. Mbaabu appeared for the 1<sup>st</sup> and 2<sup>nd</sup> respondents respectively.
4. When the Court directed that the issue of leave to appeal be argued first, Ms. Lumallas submitted that the impugned ruling granted the orders that were sought and fully disposed of the succession cause. The prayers were:
  - a. that the grant of Letters of Administration Intestate made to Angela Wambui Nderito on 8<sup>th</sup> August 2015 be confirmed;
  - b. that the deceased's estate be distributed as per the proposal in the supporting affidavit of Angela Wambui Nderito filed herewith.
    1. The learned judge found the proposed mode of distribution reasonable and held that it was necessary to value the assets that had been proposed to be sold and the proceeds to be shared out. In the circumstances, counsel submitted, it was not necessary to seek leave to appeal since this was a final determination of the matter.
    2. In response, Ms. Chepkwony submitted that under the *Law of Succession Act*, there is no automatic right of appeal to this Court; that an appeal will lie to this Court from the decision of the High Court, exercising its original jurisdiction, only with leave of the High Court, or where the application for leave is refused, with leave of this Court. She submitted that no leave was sought from the trial court. Counsel cited this Court's decision in *Rhoda Wairimu Karanja & another v Mary Wangui Karanja & another* [2014] eKLR, in support of her submission. In that matter, the Court held:
 

“We think we have said enough to demonstrate that under the *Law of Succession Act*, there is no express automatic right to the Court of Appeal; that an appeal will lie to the Court of Appeal from the decision of the High Court exercising its original jurisdiction with leave of the High Court or where the application for leave is refused, with leave of this Court. Leave to appeal will normally be granted where prima facie it appears that there are grounds which merit serious judicial consideration. We think this is a good practice that ought to be retained in order to promote finality and expedition in the determination of probate and administration disputes .... That leave of the High Court to appeal to this Court in succession matters is necessary in the former's exercise of its original jurisdiction and that where that application for leave has been rejected by the High Court, it can be made to this Court.”
7. Mr. Mbaabu concurred with the submission of Ms. Chepkwony and urged us to strike out the application as it is bad in law.
8. We have considered the submissions by counsel as summarized here above. The applicant's counsel's submission that there is an automatic right of appeal from a final decision of the trial court in a succession matter is not in tandem with the express pronouncements of this Court on the issue. This Court has pronounced itself severally on the issue of leave to appeal in succession matters, and we wish to reiterate the holding in the Rhoda Wangui Karanja case (*supra*).



9. Further in *John Mwita Murimi & 2 Others v Mwikabe Chacha Mwita & Another* [2019] eKLR, the Court held:

9. We re-affirm the decisions of this Court in *Rhoda Wairimu Karanja & Another v Mary Wangui Karanja and Another* 2014] eKLR, and Josephine Wambui Wanyoike v Margaret Wanjari Kamau & Another [“2013] eKLR where it was clearly stated that in succession matters, there is no automatic right of appeal without leave of Court.

10. It is not in dispute that the impugned ruling in this matter arises from a succession cause and the respondents did not obtain leave to appeal. The decision in *Makhangu v Kibwana* [1996] EA cited by the respondent was succinctly considered by this Court in *Rhoda Wairimu Karanja & Another v Mary Wangui Karanja & Another* [2014] eKLR In analyzing the Makhangu decision (*supra*) this court 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.”

10. In view of the foregoing, we find and hold that the applicant did not seek leave to appeal from the decision of the High Court, as required. In the circumstances, this application is bad in law and is for striking out, which we hereby do. The applicant shall bear the costs of the application.

**DATED AND DELIVERED AT NAIROBI THIS 21<sup>ST</sup> DAY OF FEBRUARY 2025.**

**D. K. MUSINGA (PRESIDENT)**

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**JUDGE OF APPEAL**

**F. TUIYOTT**

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**JUDGE OF APPEAL**

**F. V. ODUNGA**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

Signed

**DEPUTY REGISTRAR.**

