



**Maina v Cheptepkeny & 4 others (Civil Application  
E027 of 2024) [2025] KECA 833 (KLR) (16 May 2025) (Ruling)**

Neutral citation: [2025] KECA 833 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT ELDORET  
CIVIL APPLICATION E027 OF 2024  
JM MATIVO, PM GACHOKA & GV ODUNGA, JJA  
MAY 16, 2025**

**BETWEEN**

**GILBERT KIPLIMO MAINA ..... APPELLANT**

**AND**

**SUSAN CHEPTEPKENY ..... 1<sup>ST</sup> RESPONDENT**

**LEAH CHESANG CHERONO ..... 2<sup>ND</sup> RESPONDENT**

**REBECCA JEMELI SINGOEI ..... 3<sup>RD</sup> RESPONDENT**

**JAELE CHEMESUNDE MAINA ..... 4<sup>TH</sup> RESPONDENT**

**BEATRICE CHEPNGETICH MUTUNG ..... 5<sup>TH</sup> RESPONDENT**

*(Being an application for stay of execution of the ruling of the High Court at Eldoret  
(Nyakundi, J) delivered on 25th April 2024 in Succession Cause No. 350 of 2015)*

**RULING**

1. The applicant, Gilbert Kiplimo Maina, by a Notice of Motion dated 20<sup>th</sup> May 2024 seeks, in the main, leave to appeal against the ruling delivered on 25<sup>th</sup> April 2024 in Eldoret High Court Succession Cause No. 350 of 2015 and a stay of execution and/or implementation of orders resulting from the said ruling pending the hearing and determination of his intended appeal to this Court. An order for provision for costs is also sought.
2. The applicant’s case is: that on 19<sup>th</sup> April 2023, the High Court confirmed the grant of letters of administration in respect of the estate the subject of Eldoret High Court Succession Cause No. 350 of 2015; that dissatisfied with the said decision, the respondents lodged a notice of appeal to this Court; that the respondents, during the existence of the said notice of appeal, sought review of the judgement and a re-distribution of the estate; that by a ruling delivered on 25<sup>th</sup> April 2024, the learned



Judge “reviewed the mode of distribution in regard to House “B” where the awards in favour of some parties were enhanced, to bequests and/or awards to some beneficiaries and removed and new parties introduced and awards made in their favour”; that dissatisfied with all the orders arising from that decision, the applicant have filed a notice of appeal; that unless the execution of the said orders is stayed, the applicant shall suffer substantial and/or irreparable loss in the sense that it would be hard to re-organise parties once they have assumed possession; that some parties may acquire titles as a result of the orders made by the court and may proceed to dispose of such properties which would occasion the applicant substantial loss; that the subject of the appeal revolves around a landed property and the execution of the ruling and resultant certificate of confirmation of grant would have far reaching implications considering that the court appointed surveyors’ actions are likely to lead to alteration of the maps and ultimate subdivision of the land comprising the estate; that there is no possibility that, once subdivision has occurred, the beneficiaries, including the applicant who were settled on their parcels long before the deceased passed away and have constructed permanent homes, may be relocated; that the new titles may find their way into the hands of third parties; that the intended appeal, which is arguable, would be imminently rendered nugatory if status quo is not maintained during the pendency of its hearing and determination; and that in reviewing the judgement and orders arising therefore, the learned Judge ignored the principle of finality of litigation, *functus officio* and *res judicata* as well as those guiding the exercise of jurisdiction to review judgements by altering the nature and scope of the judgement.

3. The application was opposed by the respondent and in doing so, they directed themselves to the limb seeking stay of execution and adopted the view that the applicant had not met the conditions necessary to be fulfilled before a stay of execution can be granted. The position adopted by the beneficiaries was that the judgement had already been implemented hence there was nothing to stay and that the intended appeal is not arguable
4. We heard the application on 13<sup>th</sup> March 2025 on which day learned counsel, Mr Bundotich Korir, appeared for the applicant while learned counsel, Mr Owuor Okumu, appeared for the respondents. Learned Counsel relied on their written submissions which they briefly highlighted. We have considered the said submissions.
5. As we have stated above, the applicant seeks both leave to appeal and stay of execution of the decision sought to be appealed against pending the intended appeal. Although the applicant contended that the position concerning the requirement for leave to appeal in succession matters is not settled, this Court in *Mughal & Rashid (Suing as the legal representatives of the Estate of the Late Rashid Mughal) & another v Bhola* (Civil Appeal 41 of 2018) [2025] KECA 420 (KLR) (28 February 2025) (Judgment) succinctly addressed that issue and expressed itself as hereunder:

“Undeniably, the *Law of Succession Act* does not have an express provision allowing an aggrieved party in succession matters to appeal to this Court against decisions made by the High Court. Section 50(1) & (2) of the *Law of Succession Act*, the only provisions in the said statute which deal with appeals provides for appeals against-

- (a) decisions made by the Resident Magistrates’ Courts, and,
- (b) decisions made by the Kadhi’s court.

Regarding decisions made by the Resident Magistrates, sub-section (1) clearly provides that appeals against such decisions lie in the High Court whose decision shall be final. Regarding decision made by the Kadhi’s court in respect of estates of a deceased Muslim, appeals lie in the Court of Appeal, with the leave of the court. Parliament could have been clearer



than that...In our considered opinion, for this Court to properly entertain an appeal from the High Court, as the above section suggests, the appeal must lie to this Court under any written law. In other words, unless a right of appeal is clearly and expressly provided by a statute, it does not exist. This is because a right of appeal iners in no one, that is, it cannot be assumed, and therefore an appeal for its maintainability must have the clear authority of law. That is the entry point that grants this Court jurisdiction to adjudicate on the matter. If the statute does not create any right of appeal, no appeal can be sustained by this Court. It is a prerequisite for invoking the jurisdiction of this Court...As the law stands, the appellants were mandatorily required to obtain leave from the High Court or failing that, obtain the leave of this Court to enable them mount a successful appeal. An appeal filed without obtaining the necessary "leave to appeal" from the court, when such leave is required by the law, (as is the case here), is incompetent and will be struck off. It follows that this appeal is incompetent. Such leave not having been obtained, we have no jurisdiction to hear and determine the appeal."

6. Rule 41(1) of the *Court of Appeal Rules* provides that:
  1. In a civil matter—
    - a. where an appeal lies with the leave of the superior court, application for such leave may be made—
      - i. informally at the time when the decision against which it is desired to appeal is given; or
      - ii. by motion or chamber summons according to the practice of the superior court, within fourteen days of such decision;
    - b. where an appeal lies with the leave of the Court, application for such leave shall be made—
      - i. in the manner laid down in rules 44 and 45 within fourteen days after the decision against which it is desired to appeal; or
      - ii. where application for leave to appeal has been made to the superior court and refused, within fourteen days after such refusal.
7. Our understanding is that where leave to appeal is required, its application may be made informally/ orally at the time the decision intended to be appealed against is made or formally within 14 days of that decision. Where such an application is made before the High Court and is dismissed, then the party intending to appeal must move this Court within 14 days of such dismissal. See *Awadh Saleh Said Sherman & Another v Barika Mohamed Saleh Said Sherman* Civil Application No. Nai. 346 of 2001 and *Manase Makio v Asman Mombo* Civil Appeal No. 36 of 1998.
8. In this case the decision sought to be appealed against was made on 25<sup>th</sup> April 2024. The instant application is dated 20<sup>th</sup> May 2024, clearly outside the 14 days prescribed under the *Rules*.
9. It follows that the application for leave is incompetent. Without leave to appeal, the intended appeal would be still-born and a still-born appeal cannot be said to be arguable. Accordingly, no purpose would be served by granting the stay in those circumstances. See *Muhamed Yakub & Another v Mrs Badur Nasa* Civil Application No. Nai. 285 of 1999.
10. In the premises, the whole application is misconceived and dismiss it but with no order as to costs, this being a succession dispute revolving around the estate of a deceased person.



11 It is so ordered.

**DATED AND DELIVERED AT NAKURU THIS 16<sup>TH</sup> DAY OF MAY, 2025.**

**J. MATIVO**

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**JUDGE OF APPEAL**

**M. GACHOKA C. ARB, FCIARB.**

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**JUDGE OF APPEAL**

**G.V. ODUNGA**

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**JUDGE OF APPEAL**

I certify that this is the true copy of the original

*signed*

**DEPUTY REGISTRAR**

