



**Kibara v Kibara (Civil Application E083 of 2024)  
[2025] KECA 1091 (KLR) (20 June 2025) (Ruling)**

Neutral citation: [2025] KECA 1091 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPLICATION E083 OF 2024  
S OLE KANTAI, JW LESSIT & A ALI-ARONI, JJA  
JUNE 20, 2025**

**BETWEEN**

**PETER MURIITHI KIBARA ..... APPLICANT**

**AND**

**STANLEY MARINGA KIBARA ..... RESPONDENT**

*(An application for stay of execution against the Ruling of the High Court at Kerugoya (Mwongo, J.) delivered on 9th August, 2024 in Succession Cause No. 964 of 2013)*

**RULING**

1. The dispute before Mwongo, J. in Succession Cause No. 964 of 2013 (in the matter of the estate of Kibara Njagi – deceased) involved the distribution of the estate, the deceased having died on 4<sup>th</sup> February, 1978. He had four wives and according to Kikuyu customary law, that made the estate to comprise four houses. The Judge found in the end that there had been gifts inter vivos to some of the houses and:  
  
“...From the evidence and the submission of the parties, it is clear that 4<sup>th</sup> house was not gifted any land or through (sic) by the deceased efforts during his lifetime. A gift inter vivos is required to be taken into account when distributing the estate of a deceased person to the beneficiaries under Section 42 of the Act.”
2. Therefore the protest was dismissed and the mode of distribution proposed by the petitioner was allowed.
3. The protestor - Peter Muriithi Kibara (applicant before us) lodged a Notice of Appeal against the whole decision.



4. The applicant is now before us in a Motion on notice said to be brought under sections 1A, 1B and 3A of the Civil Procedure Act, Order 42 Rule 6 Civil Procedure Rules, 2010 and all other enabling provisions of law. We note that Civil Procedure Act and the rules made thereunder have no application in this Court save to specific provisions.
5. The applicant prays in the main that we be pleased to grant a stay of execution of the said ruling and subsequent Certificate of Confirmed Grant pending the hearing and determination of the Motion. In grounds in support of the application and in his supporting affidavit the applicant says that he is aggrieved by the said ruling "... particularly on the issue of distribution of Land Parcel Number Inoi/Ndimi/276 amongst the beneficiaries of the deceased..."; that there is an imminent threat that the respondent will execute the ruling which will render the intended appeal nugatory; that the Judge did not consider crucial evidence which was on record; that the decision was against the weight of evidence; and that he will suffer substantial loss if the application is not granted.
6. When the application came up for virtual hearing on 19<sup>th</sup> February, 2025 we were satisfied that the respondent had been served with a hearing notice on 28<sup>th</sup> January, 2025 at 3.40 p.m. through stanleymaringa@gmail.com.
7. The applicant appeared in person and fully relied on his written submissions which we have perused and considered. The
8. respondent had not filed written submissions despite being required to do so in the said hearing notice.
9. We asked the applicant whether he had been granted leave to appeal, the proceedings in the High Court being succession proceedings but he had no answer to that question.
10. This Court stated in the case of Nkoliai vs. Ololparaki & 2 Others [2023] KECA 1228 (KLR) regarding leave to appeal in succession matters:

“The Law of Succession Act provides for no express right of appeal in such a matter. This then brings into play the competing interests between article 163(4) of the Constitution, section 3(1) and (2) of the Appellate Jurisdiction Act, and the Law of Succession Act. The Law of Succession Act provides for no right of appeal to this Court while section 3(1) of the Appellate Jurisdiction Act limits appeals to this Court from the High Court as prescribed by an Act of Parliament. Article 164(3) of the Constitution on the other hand clothes this Court with the jurisdiction to hear and determine appeals emanating from the High Court or any other court or tribunal as prescribed by an Act of Parliament.

Whereas a litigant in a succession matter should not be denied the right of appeal, such a right ought to be subjected to scrutiny in order to justify the expenditure of the limited resources on the matter. To this end, we are persuaded by the holding of this Court in John Mwita Murimi & 2 others vs. Mwikabe Chacha Mwita & another [2019] eKLR that:

“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.

17. It is our conclusion that leave to appeal was a pre-requisite in the present appeal. We note that the same was not obtained prior to filing of this appeal. Consequently, this Court lacks the requisite jurisdiction to hear and determine this appeal. For the stated reason, this appeal is struck out."

11. Likewise, as in the Nkoli (supra) case, the applicant required to apply for and obtain leave to appeal in the succession matter. Having not done so we lack jurisdiction to entertain this application which we hereby strike out as being incompetent. There will be no order on costs.

**DATED AND DELIVERED AT NYERI THIS 20<sup>TH</sup> DAY OF JUNE, 2025.**

**S. ole KANTAI**

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**JUDGE OF APPEAL**

**J. LESIIT**

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**JUDGE OF APPEAL ALI – ARONI**

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**JUDGE OF APPEAL**

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

*Signed*

Deputy Registrar

