



**Rotich v Bonjo (Administratrix of the Estate of Shadrach Kipkoech Bonjo - Deceased)  
((Administratrix of the Estate of Shadrach Kipkoech Bonjo - Deceased)) (Civil  
Application E023 of 2025) [2025] KECA 1045 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KECA 1045 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT ELDORET  
CIVIL APPLICATION E023 OF 2025  
JM MATIVO, JA  
JUNE 12, 2025**

**BETWEEN**

**SAMMY KIPKOSGEI ROTICH ..... APPLICANT**

**AND**

**TRUPHENA JERUTO BONJO ..... RESPONDENT  
(ADMINISTRATRIX OF THE ESTATE OF SHADRACH KIPKOECH BONJO -  
DECEASED)**

*(An application for extension of time from ruling of High of Kenya at Kapsabet  
(J. Karanja, J.) dated 19th November, 2024 in P&A No. E015 of 2021)*

**RULING**

1. Vide an application dated March 18, 2025 brought under section 3A and 3B of the [Appellate Jurisdiction Act](#), Cap 9, Laws of Kenya, Rule 4, and 39 (b) of the Court of Appeal Rules 2010, the applicant prays that:
  - a. Spent
  - b. This honourable court be pleased to grant the applicants leave to file and serve a notice and record of appeal out of time within such reasonable period as this honourable court may deem expedient.
  - c. The notice and the record of appeal filed herewith be deemed as properly filed and served upon payment of the requisite filing fees.
  - d. Pending hearing and determination of this application inter-parties, the status quo on both the land and the registers of LR. Nos. Nandi/Ndulele/675, Nandi/Ndulele/1242, Nandi/Ndulele/881, Nandi/Ndulele/392, Nandi/Ndulele/1452, Nandi/Ndulele/1453 and



Nandi/Ndulele/1603, Nandi/Ndulele/1604, Nandi/Ndulele/1605, Nandi/Ndulele/1606 and Nandi/Ndulele/1607 being sub-divisions of all that parcel of land originally known as LR. No. Nandi/Ndulele/1241 be maintained.

- e. Pending hearing and determination of the intended appeal, the status quo on both the land and the registers of LR. No.s. Nandi/Ndulele/675, Nandi/Ndulele/1242, Nandi/Ndulele/881, Nandi/Ndulele/392, Nandi/Ndulele/1452, Nandi/Ndulele/1453 and Nandi/Ndulele/1603, Nandi/Ndulele/1604, Nandi/Ndulele/1605, Nandi/Ndulele/1606 and Nandi/Ndulele/1607 being sub-divisions of all that parcel of land originally known as LR. No. Nandi/Ndulele/1241 be maintained.
  - f. The costs of this application be maintained.
2. The application is premised on the grounds listed on the face of the application and the applicant's supporting affidavit sworn on March 21, 2025. The grounds in support of the application are that:- (a) the failure to file and serve a notice of appeal was occasioned by the indisposition of counsel on record for the applicant; (b) the applicant will be greatly prejudiced if denied his right of appeal; (c) no prejudice will be suffered by the respondents since they are currently utilizing the portions allocated to them which portions form the subject of the appeal; (d) the intend appeal has merit with very high chances of success.
  3. The application is opposed vide the respondent's replying affidavit sworn on April 24, 2025 by Truphena Jeruto Bonjo who is the Administratrix of the estate of Shadrach Kipkoech Bonjo (Deceased). The respondent avers that: (a) the instant motion is frivolous, vexatious and a blatant an abuse of the process of this Court; (b) the application offends the doctrine of finality in litigation and throws probate proceedings into unnecessary uncertainty; (c) the applicant lacks an automatic right of appeal hence the instant application is fatally defective having been brought without leave of the High Court; (d) the instant application has been overtaken by events noting that the administration of the subject estate was concluded and the subject properties transmitted to the ultimate beneficiaries.
  4. The application before me is what is referred to as an omnibus application, brought under a number of rules and seeking a variety of orders that cannot, under our Rules, be heard and determined together by a single judge- see rule 55 of the Rules of this Court. The only prayer properly before me is the prayer for extension of time, which I now turn to consider.
  5. I must state at the outset that, this application is a non- starter for reasons that it relates to a succession matter. There is a long line of authorities in which it has been held consistently held that there is no automatic right of appeal to this Court from a decision of the High Court in succession matters. The appellant must first obtain leave, either from the High Court or from this Court. See this Court in *Mughal & Rashid (Suing as the legal representatives of the Estate of the Late Rashid Mughal) & Another vs Bhole (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 infers 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. My understanding is that where leave to appeal is required, an application for leave 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 vs Barika Mohamed Saleh Said Sherman*, Civil Application No. Nai. 346 of 2001 and *Manase Makio vs Asman Mombo* Civil Appeal No. 36 of 1998.

8. In this case the decision sought to be appealed against was made on November 19, 2024. The instant application is dated March 18, 2025, clearly outside the 14 days prescribed under the Rules.

9. Without leave to appeal to this Court being granted by either the High Court of this Court, the intended appeal would be still-born. Accordingly, no purpose would be served by considering the instant application. The upshot is that the application dated March 18, 2025 is incompetent and is accordingly dismissed. This being a family matter, the order that commends itself to is that each party bears its own costs.

**DATED AND DELIVERED AT ELDORET THIS 12<sup>TH</sup> DAY OF JUNE, 2025.**



**J. MATIVO**

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**JUDGE OF APPEAL**

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

Signed.

**DEPUTY REGISTRAR.**

