



REPUBLIC OF KENYA



KENYA LAW
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**Gachigua v Mbugua & 2 others (Civil Appeal E112 of 2024)
[2025] KECA 1401 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1401 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPEAL E112 OF 2024
S OLE KANTAL, JW LESSIT & AO MUCHELULE, JJA
JULY 31, 2025**

BETWEEN

EPHRAIM MWANGI GACHIGUA APPLICANT

AND

ROSE MUMBI NDUNGU 1ST RESPONDENT

BEATRICE GAKENIA 2ND RESPONDENT

AGNES WANJIRU KIHURANI 3RD RESPONDENT

(Being an application for stay of execution pending appeal of the Ruling and orders of the High Court of Kenya at Nyeri (Kizito, J.) dated 24th June 2024 in HC Succ. Cause No. 472 of 2024)

RULING

1. The dispute herein revolves around LR No. Konyu/Baricho/2133 which belonged to the deceased Sophia Watare Gachigua who died intestate on 29th February 2004. Ephraim Mwangi Gachigua, the applicant, is the grandson of the deceased. He petitioned the High Court at Nyeri for the grant of letters of administration. Beatrice Gakenia Mbugua, the respondent, and one Joyce Nyambura cross-petitioned for the grant on 6th May 2005. On 16th May 2014 a grant of letters of administration intestate was issued to the applicant.
2. During the hearing of the application for the confirmation of the grant, the trial court received the evidence of the beneficiaries of the estate. At the end of the day, in a judgment delivered on 24th November 2016, the suit property was distributed amongst the eleven (11) beneficiaries. They included the applicant who got 0.144 acres and the 1st respondent who got 0.288 acres. Rose Mumbi Ndung'u, the 2nd respondent and Agnes Wanjiru Kihurani, the 3rd respondent, got 0.288 acres each. The distribution was based on the protest by the 1st respondent.



3. When the trial court was informed that the applicant had refused to proceed with the administration of the estate by sharing the suit property as had been decided, on 24th June 2024 it made an order replacing the applicant as the administrator and appointed Mercy Nyaguthi Ngatia and Prof. Agnes Wanjiru Kihurani (the 3rd respondent) as the new administrators of the estate. They were tasked with implementing the certificate of confirmation of grant within six months.
4. The applicant was aggrieved by the orders of 24th June 2024 and filed a notice of appeal seeking to challenge them before this Court. The notice of appeal followed the instant application under Rule 5(2)(b) of this Court's Rules seeking an injunction to restrain the respondents, and all those acting under them, from subdividing the suit property, demolishing structures, leasing, transferring, charging or in any other way interfering with the suit property until the intended appeal has been heard and determined. In the grounds and supporting affidavit sworn by the applicant, it was stated that he was not satisfied with the decision because he had been stripped of the administration of the estate without cause and that the new administratrices had been appointed without them applying for the same. The applicant was basically not satisfied with the way the estate had been distributed as he alleged that the suit property had been fraudulently taken away from him. He further stated that he had not implemented the certificate of administration because the 3rd respondent had refused to release the title documents to him to enable the subdivision. He contended that he had an arguable intended appeal, and that if the injunction was not granted, he stood to suffer substantial loss and irreparable damage.
5. The respondents opposed the application by relying on the replying affidavit sworn by the 3rd respondent. According to the 3rd respondent, the appointment of the two administratrices following the court's own motion when it became clear that the applicant was not going to share out the estate. She averred that the orders being impeached had not interfered with the distribution that was contained in the judgment delivered on 24th November 2016 which remained in place.
6. When the application came before us for hearing, the applicant was in person while the respondents were represented by learned counsel Ms. Wangeci Macharia. The applicant had filed written submissions in which he wholly relied. In the submissions, he argued that it was necessary for there to be an injunction because the title deed to the suit property had been fraudulently interfered with, and that until these matters had been resolved, the implementation of the certificate of confirmation should not be done. He submitted that he had been unable to distribute the estate because the 3rd respondent had kept away the title deed from him. According to him, the title deed in respect of the suit property was invalid which should not be used to distribute the estate.
7. It was submitted on behalf of the respondents that, this being a succession matter, the applicant did not have an automatic right of appeal; that he was required to seek and obtain leave, which he had not done. That being the case, it was submitted that the prayers sought in the notice of motion could not be granted; that the applicant did not have an arguable intended appeal. On the nugatory aspect, it was submitted that the applicant was not going to suffer in any way as the distribution of the estate was based on the judgment which was not being challenged; that the impugned orders did not rectify or vary the certificate of confirmation.
8. We have considered the application and the rival submissions. We are called upon to determine whether the applicant has made a case for the injunction pending the hearing and determination of his intended appeal.
9. The record is clear that this is a succession matter that was filed before the High Court in its original jurisdiction. It is now trite that there is no automatic right of appeal to this Court (See Francis Gachoki Murage -vs- Juliana Waindi Kinyua & Another, Civil Appeal No. 139 of 2009; Rhoda Wairimu Kidi &



Another -vs- Mary Wangui Karanja & Another [2014]eKLR). A person seeking to appeal has to seek leave from the High Court. If it is not granted, he can seek it from this Court.

10. Now that the applicant has not shown that he sought and obtained leave to appeal prior to the filing of this application, it is obvious to us that his notice of appeal was not valid. Without a valid notice of appeal, the jurisdiction of this Court has not been properly invoked. The application is incompetent.
11. That being the case, the notice of motion dated 5th November 2024 is struck out with costs to the respondents.

DATED AND DELIVERED AT NYERI THIS 31ST DAY OF JULY, 2025

S. OLE KANTAI

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JUDGE OF APPEAL

J. LESIIT

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JUDGE OF APPEAL

A.O. MUCHELULE

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JUDGE OF APPEAL

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

SIGNED

DEPUTY REGISTRAR

