



THE SUPREME COURT OF KENYA

ELIUD MWENDIA WANDI Vs KEVIN WANJOHI MUCHIRA

PETITION NO. E029 OF 2024

DATE OF RULING: 31ST MARCH 2026

MEDIA SUMMARY MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Supreme Court or any member of the Court.

Orders: The Court partially allows the consolidated appeal.

Background

This case arises from a long-running succession dispute following the death of Magu Mwenje (also known as Peter Wandu Mwenje) in 1998 over the distribution of his estate, principally land parcel Kabare/Mutige/20, between two households led by Annah Wanjiku Wandu and Jane Muthoni Muchira, both of whom were recognized by the courts as widows of the deceased. The Magistrate's Court and later the High Court affirmed that both women and their respective children were entitled to inherit and distribute the estate accordingly. On appeal, the Court of Appeal, held that an appeal to the Court of Appeal from decisions of the High Court rendered in exercise of its original jurisdiction in succession matters lies only with the leave of the court. As no leave had been sought or obtained, the court found the appeal to be incompetent and accordingly struck it out.

In the appeal before the Supreme Court, the Court delineated the following issues for determination:

- i. Whether, in light of Article 164(3)(a) of the Constitution, leave is a prerequisite for lodging an appeal against a decision of the High Court rendered in the exercise of its original jurisdiction in a succession matter.
- ii. What orders should issue?

Upon consideration, the Supreme Court allowed the appeal in part for the following reasons:

1. **Issue 1:** There is no legal basis for imposing a requirement of leave as a prerequisite to lodging an appeal against a decision of the High Court rendered in the exercise of its original jurisdiction in a succession matter. Such a requirement, not being anchored in either the Constitution or statute, cannot properly be sustained.

Given that Article 27(1) of the Constitution guarantees the right to equality before the law and equal protection of the law, it would be discriminatory for parties who originate their succession matters before the Magistrates' courts to appeal such decisions to the High Court under section 50(1) of the Law of Succession Act, and deny such a right of appeal to parties who originate their succession matters at the High Court. Accordingly, in the absence of any express statutory limitation, a decision

of the High Court rendered in the exercise of its original jurisdiction in a succession matter is appealable to the Court of Appeal as of right. Any contrary position would be inconsistent with the Constitution's transformative vision of a fair, accessible, and non-discriminatory system of justice.

2. **Issue 2:** The judgment of the court of appeal is set aside in its entirety. The appellant's appeal before the Court of Appeal be reinstated and heard afresh on its merits before a differently constituted bench of that Court. Each party should bear its own costs.

Accordingly, the Court issued the following orders:

1. The appeal dated 5th July, 2024 is hereby allowed.
2. The Judgment of the Court of Appeal delivered on 5th February 2021 is hereby set aside.
3. The appellant's appeal before the Court of Appeal be reinstated and heard afresh on its merits before a differently constituted bench of that court on priority basis.
4. This being a family matter, we order that Parties do bear their respective costs.

