



In re Estate of the Late Christopher Wawire Maudo (Deceased) (Succession Cause 14 of 2003) [2024] KEHC 15871 (KLR) (30 October 2024) (Ruling)

Neutral citation: [2024] KEHC 15871 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
SUCCESSION CAUSE 14 OF 2003
REA OUGO, J
OCTOBER 30, 2024
IN THE MATTER OF THE ESTATE OF THE LATE
CHRISTOPHER WAWIRE MAUDO (DECEASED)**

BETWEEN

ALBERT MANG'OLI WAWIRE PETITIONER

AND

CAROLYNE NABWILE WAWIRE OBJECTOR

AND

WILLIAM WECHULI WAWIRE APPLICANT

RULING

1. In a Motion dated the 1st December 2023 William Wechuli Wawire, the applicant, seeks to substitute the petitioner/ administrator Albert Mang'oli Waweru who is deceased. He also seeks to have a stay of execution and implementation of the certificate of confirmation pending the hearing of the intended appeal. He also seeks that cost be provided for.
2. The application was not opposed. Though served the respondents did not file any response.
3. The applicant filed a supporting affidavit dated 1st December 2023. He depones as follows in his grounds on the face of his application; he is the son of Christopher Wawire Waudu whose estate is the subject of this succession cause. His brother Albert Mang'oli Wawire who is the petitioner passed on 19.3.2022 leaving a vacuum yet to be filled. He wishes to be substituted to take the place of the deceased petitioner to facilitate the administration of his estate. He also wishes to pursue the appeal that had been initiated by the petitioner before his demise. The substitution must be conducted so that all pending issues can be determined. The 1st house of Dorcas Wawire is suffering from a lack of representation in the matter. The application is made in good faith and in the best interests of justice.



The objector administrator will suffer no prejudice if the orders are granted. The estate is yet to be determined and the certificate of confirmation implemented. It is in the best interest of the justice that a stay of execution order be granted to safeguard the subject matter of the appeal. Unless the sought are granted the intended appeal shall be rendered nugatory. The applicant is desirous of being heard on his appeal which raises arguable grounds and has a high chance of success. The application is made in good faith and in the best interest of justice.

4. The applicant's supporting affidavit is incomplete and starts in paragraphs 11 to 20. I cannot tell what was in paragraphs 1 to 10. I am therefore left to consider the application on the grounds on the face of the application. . The beneficiaries who attended court had no objection to the applicant substituting the petitioner Albert Mang'oli Wawire who is now deceased. I therefore grant this prayer.
5. On the issue of granting the stay of execution order, I find that the ruling which will be the subject of the intended appeal was delivered on the 4th of June 2021. The court delivered a judgment on the mode of distribution of the deceased's estate amongst the 2 houses. According to the applicant, the house of Dorcas is suffering from a lack of representation, and they have an arguable appeal. I find this affidavit vague as the applicant has failed to explain the substantial loss, how the house of Dorcas will suffer, or how they are currently affected. The applicant has also failed to explain why it took them over two years to apply for a stay of execution order. Merely stating that the objector will not suffer any prejudice is not sufficient. I am not persuaded that the applicant deserves an order as stay as sought. This is an old matter of 2003 and the parties need to wind up this estate. I find no merit in the application and it is dismissed with no order as to costs as there was no appearance on the part of the respondents.

DATED SIGNED AND DELIVERED AT BUNGOMA ON THIS 30TH DAY OF OCTOBER 2024.

R. E.OUGO

JUDGE

In the presence of;

Mr. Masiga h/b for Mr. Wekesa For the Applicant

Respondents - Absent

Wilkister C/A

