



REPUBLIC OF KENYA



**In re Estate of the Late Joseph Adiedo (Deceased) (Succession Appeal
10 of 2021) [2023] KEHC 1833 (KLR) (27 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1833 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
SUCCESSION APPEAL 10 OF 2021
FA OCHIENG, J
FEBRUARY 27, 2023**

**IN THE MATTER OF THE ESTATE OF THE LATE JOSEPH
ADIEDO A.K.A JOSEPH ADIEDO ODERA (DECEASED)**

BETWEEN

MARGARET OMOLO WERE APPELLANT

AND

JANE ADHIAMBO SANDE RESPONDENT

RULING

1. The application dated 20th December 2021 seeks stay of execution of the judgment which was delivered by the learned trial Magistrate on 8th December 2021. The applicant, Margaret Omolo Were, was dissatisfied with the judgment, and she has lodged an appeal at the High Court.
2. It is her request that pending the hearing and determination of the appeal, the execution of the judgment be stayed.
3. At the core of the application is the property L.R. NO. West Bunyore/Ebutanyi/1189, which is registered in the name of the applicant.
4. The applicant became the registered proprietor of that piece of land pursuant to a Certificate for Confirmation of Grant which was issued by the trial court on 14th February 2019.
5. When the respondent, Jane Adhiambo Sande, became aware of the said confirmation of the grant, she lodged a summons for its annulment or revocation.
6. On 8th December 2021, the trial court granted an order for the revocation and annulment of both the Grant and the Certificate of Confirmation of the said Grant.



7. The trial court further ordered that any transmission which may have affected the suit property was null and void; and the same was reversed.
8. Thirdly, the trial court ordered the applicant to surrender the Grant, as well as the Certificate of Confirmation, for cancellation.
9. The applicant has submitted that if this court does not order that there be a stay, she would suffer substantial loss.
10. The applicant said;
 - 12 On the question of substantial loss, this was deponed to by the applicant. The court had cancelled the applicant's title hence exposed to dealings by other third parties, particularly the respondent, and should this appeal find in favour of the applicant, it will remain a mere academic exercise as the land will have changed hands to the detriment of the applicant and the deceased's estate."
11. I have noted that the trial court's decision was pegged upon the fact that the petitioner had originally misled the court to issue the grant to her, by indicating that Mary Mbwaya Etole had signed a consent in Form 38. The said form was intended to persuade the court that those who ranked in priority had agreed that the grant could be issued to a person of an equal or of lesser priority.
12. Confronted with the testimony of Mary Mbwaya Etole, who denied signing the Form 38, the applicant sought to disown the said form.
13. Without pre-empting the intended appeal, I note that the applicant was focused on the question regarding whether or not the respondent was or had been the wife of the deceased. That may be an arguable point in the appeal, and I so hold.
14. But because it is the applicant who had disclosed some of the beneficiaries to the estate, yet she thereafter excluded them from the distribution of the estate; I am prepared to assume, (without making a decision thereon, at this stage) that the applicant was entitled to a share of the estate of the deceased.
15. Considering that the respondent and other persons also lay claim to the estate, I hold the considered view that the interests of the justice will be safeguarded by an order which will secure the estate until the appeal is determined.
16. According to the applicant, the estate would be best safeguarded by an order for stay of execution.
17. I understand her to be saying that the estate is safe if the title of the property thereof remains in her name.
18. In the light of the competing interests by various persons, each of whom believes that he or she has a stake in the property, I hold the considered view that the only way to secure the estate is by having the Grant annulled, and the title transferred back to the name of the deceased.
19. The fear which the applicant has, about the possibility of the respondent putting the property beyond the reach of the applicant, is equally applicable to the respondent.
20. But if the Grant is annulled; and if the property reverts to the name of the deceased, it will be secure until the court makes a determination of the appeal, and possibly of the distribution of the estate.



21. The learned trial Magistrate had noted that the orders he had made would;
pave way for fresh and proper succession proceedings to be commenced in the usual way,
following the procedure laid down in the Law of Succession Act.
22. In effect, the orders sought to be stayed, do not grant any advantage to the respondent or any other person laying claim to the estate. The said orders simply have the effect of leveling the playing field. Thereafter, if the applicant were to persuade the court that the respondent's claim was without foundation, she would be vindicated.
23. In the conclusion, I find that the applicant failed to prove that if stay was not granted, she would suffer substantial loss.
24. The rejection of the application for stay would not render the appeal nugatory. The application is therefore rejected, with costs to the respondent.

DATED, SIGNED AND DELIVERED THIS 27TH DAY OF FEBRUARY, 2023.

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FRED A. OCHIENG

JUDGE

DEPUTY REGISTRAR

