



**In re Estate of M'Mwongo M'Mbogori (Deceased) (Succession Cause E004 of 2023) [2023] KEHC 3019 (KLR) (30 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 3019 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE E004 OF 2023  
TW CHERERE, J  
MARCH 30, 2023**

**IN THE MATTER OF THE ESTATE OF M'MWONGO M'MBOGORI  
(DECEASED)**

**BETWEEN**

**DAVID MUKORONIA MWONGO ..... APPELLANT**

**AND**

**GIDEON MUTUA MWONGO ..... 1<sup>ST</sup> RESPONDENT**

**CATHERINE GACHERI MWONGO ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. By judgment dated January 25, 2023, the trial court in Meru Cmcc Succession Cause No. 1 of 2019 upon satisfying itself that deceased had provided for his sons during his lifetime directed that LR. Kiirua/Naari-Maitei/257 which was the only asset of the estate distributed to deceased's four daughters in equal shares.
2. By notice of motion dated February 14, 2023, supported by an affidavit sworn by David Mukoronia Mwongo (appellant/applicant), applicant has now moved the court seeking stay of the judgment dated January 25, 2023 pending the hearing and determination of the intended appeal.
3. The summons is based mainly on the ground that Applicant intends to appeal the judgment dated February 14, 2023.
4. By his replying affidavit sworn on February 21, 2023, Gideon Mutua Mwongo (1<sup>st</sup> respondent) reiterates the court's judgment that the sons of deceased, including the appellant/applicant had been provided for during the deceased's lifetime and faults the appellant/applicant for attempting to disinherit the deceased's daughters.



5. I have considered the summons in the light of the affidavits on record and the trial court's judgment and the issue for determination is whether a case has been made for stay of execution of the judgment dated February 14, 2023.
6. Substantial loss, in its various forms is the corner stone of best jurisdictions for granting a stay. As to what is substantial loss, it was observed in *James Wangalwa & another vs. Agnes Naliaka Cheseto* [2012] eKLR, that:

“No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process. The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the applicant as the successful party in the appeal ... the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.”
7. A party seeking an order of stay pending appeal bears a specific burden regarding proof of substantial loss. In this case, other than that Applicant is aggrieved by this court's ruling dated October 27, 2022, applicant has not demonstrated that she is likely to suffer any loss substantial or otherwise.
8. In the absence of prove of substantial loss, it is unlikely that the appeal would be rendered nugatory especially considering that the estate the subject matter of this cause is yet to be distributed.
9. I take cognizance of the fact that the Applicant has a right to appeal but the filing of an appeal perse does not entitle a party who has not demonstrated substantial loss to an order of stay.
10. From the foregoing, I find that the application dated notice of motion dated February 14, 2023 lacks merit and it is dismissed with costs to the Respondents.

**Dated at Meru this 30<sup>th</sup> DAY OF March 2023**

**WAMAE.T. W. CHERERE**

**JUDGE**

**Appearances**

**Court Assistant - Morris Kinoti**

**For Appellant/Applicant - Mr. Gikunda for Gikunda Anampiu & Co. Advocates**

**For Respondents - Mr. Omari for Kaberia Arimba & Co. Advocates**

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Page 2 of 2

