



REPUBLIC OF KENYA



KENYA LAW

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**In re Estate of Naomi Wanjiru Chege (Deceased) (Succession Cause
2602 of 2014) [2023] KEHC 21815 (KLR) (Family) (31 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21815 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 2602 OF 2014
PM NYAUNDI, J
JULY 31, 2023
IN THE ESTATE OF NAOMI WANJIRU CHEGE (DECEASED)**

BETWEEN

**ELIZABETH WANJIRU CHEGE 1ST APPLICANT
HELLEN NJERI CHEGE 2ND APPLICANT
SIMON KIMANI CHEGE 3RD APPLICANT
PETER CHEGE (DECEASED) 4TH APPLICANT
I (MINOR SUING THROUGH HER FATHER AND NEXT FRIEND)
MI 5TH APPLICANT**

AND

TONY KAMAU WANJIRU RESPONDENT

RULING

1. The Applicant Tony Kamau Wanjiru presents this application dated May 29, 2023 under Sections 1A, 1B, 3A and 80 of the *Civil Procedure Act*, Order 45 Rules 1 and 2 of the *Civil Procedure Rules, 2010* filed by the Respondent/ Applicant, seeking for orders that:
 - a. Spent.
 - b. This Honorable Court be pleased to review paragraph 14 (a) and (b) of its ruling delivered on May 19, 2023 directing the rent collected from Plot Number 60 Huruma Fire Victims Estate to be deposited in a joint interest earning account held in the joint names of the Advocates for the Applicants within 14 days from the date of the ruling.



- c. This Honorable Court be pleased to strike out paragraph 14 (a) and (b) of the said ruling because of notable bias and error apparent on the face of the record.
 - d. Costs of this application be provided for.
2. The application is based on the grounds that:
- a. This Honorable Court through its ruling delivered on May 19, 2023 granted stay of proceedings on condition that the rent collected from, Plot No 60 Huruma Victims estate be deposited in a joint interest earning account held in the joint names of the advocates for the applicants within 14 days from the date of the ruling.
 - b. No formal application was made before this Honorable Court seeking orders for joint interest earning account over the respective rent and therefore the same was never prayed for.
 - c. It is noted with concern that the said ruling was not fair to the respondent as it was biased by directing only the advocates for the applicants to deposit rent in a joint interest earning account while locking out the respondent and his advocate.
 - d. There was no specific evidence to prove actual rent collected from Plot No 60 Huruma Fire Victims estate to warrant the same being deposited in a joint interest earning account.
 - e. The applicants failed to prove before this Honorable Court whether Plot No 60 Huruma Fire Victims Estate is a commercial or residential property as there was no formal application before this Honorable Court seeking the said orders.
 - f. The factual truth is that Plot No. 6 Huruma Fire Victims Estate is officially identified as an informal settlement scheme and therefore it cannot be a commercial property.
 - g. Plot No 60 Huruma Fire Victims Estate is the subject matter of the suit before the Court of Appeal at Nairobi.
 - h. Kituo cha Sheria which is on record for the 1st, 2nd and 3rd applicants have no legal mandate to operate an advocate client account.
 - i. Great prejudice will be occasioned to the applicant who is currently in occupation of the said residential house and if this honorable court does not intervene now the outcome of the said appeal will be rendered nugatory.
3. All Respondents, opposed the application and have filed affidavits in opposition.
4. The matter was canvassed by way of oral submissions on July 21, 2023.

Analysis and Determination

5. The Applicant is aggrieved by my earlier ruling, delivered on May 19, 2023, wherein I stated at Paragraph 14 (a) and (b) as follows:

“In exercise of my discretion, I therefore grant stay of proceedings on the following conditions:

- a. That the rent collected from Plot No 60 Huruma Fire Victims Estate be deposited in a joint interest earning account held in the joint names of the advocates for the applicants and within 14 days from the date of this ruling.



- b. The matter be mentioned on June 14, 2023 to confirm compliance.”
6. Order 42 Rule (6) of the *Civil Procedure Rules, 2010* states:

“No order for stay of execution shall [emphasis mine] be made under sub – rule (1) unless:

 - a. The court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and [emphasis mine]
 - b. Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”
7. The purpose of stay of execution is to preserve the status quo pending the hearing of the appeal as was observed in *RWW vs EKW* [2019] eKLR where the court stated that, “... The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if the appeal is successful, is not rendered nugatory. However, in doing so, the court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs.”
8. Order 42 Rule 6 (2) is couched in mandatory terms, in seeking to review this aspect of the ruling the Applicant seeks an unconditional stay which I am not inclined to grant. There is no requirement for a formal application for security as is argued by the Applicant. Once he moves the Court for stay he ought to be prepared to meet the conditions for stay.
9. The Applicant is speaking from both sides of his mouth when it comes to whether or not there are rental premises on the subject plot. I am persuaded that there are rental units on the subject parcel and therefore will not revise the ruling with regards to the existence of rental units on the subject plot.
10. The Application for review will partly succeed with regards to the joint account.
11. In this regard, therefore, I reiterate the orders issued in the ruling delivered on May 19, 2023 and order that stay of proceedings herein is granted on the following conditions:
 - a. That the rent collected from Plot No 60 Huruma Fire Victims Estate be deposited in a joint interest earning account held in the joint names of the Counsel for the Applicant and the Respondents herein.
 - b. The Said Account to be operationalized within 14 days from the date of this ruling.
 - c. The matter be mentioned on August 21, 2023 before the Deputy Registrar to confirm compliance.
12. Each party bears its own costs.

It is so ordered

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31ST DAY OF JULY, 2023.

P. NYAUNDI

HIGH COURT JUDGE

In the presence of:



Sylvia Court Assistant

