



REPUBLIC OF KENYA



**KENYA LAW**  
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**Bunyasi & 4 others v Mbalanya & 2 others (Succession Appeal  
E006 of 2022) [2023] KEHC 22764 (KLR) (28 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22764 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
SUCCESSION APPEAL E006 OF 2022  
WM MUSYOKA, J  
SEPTEMBER 28, 2023**

**BETWEEN**

**MARY BUNYASI ..... 1<sup>ST</sup> APPELLANT  
JOYCE WANDERA ..... 2<sup>ND</sup> APPELLANT  
CHRISTINE OMANYO ..... 3<sup>RD</sup> APPELLANT  
EUNICE OMANYO ..... 4<sup>TH</sup> APPELLANT  
SARAH OMANYO ..... 5<sup>TH</sup> APPELLANT**

**AND**

**LUCY MBALANYA ..... 1<sup>ST</sup> RESPONDENT  
DAVIS OMANYO ..... 2<sup>ND</sup> RESPONDENT  
ABRAHAM OMANYO ..... 3<sup>RD</sup> RESPONDENT**

*(An appeal arising from orders made in the ruling of Hon. PA Olengo, Senior Principal Magistrate, SPM, in Busia CMCS No. 27 of 2016, of 7th October 2022)*

**RULING**

1. There are 2 applications for determination, dated October 14, 2022 and November 25, 2022.
2. The application, dated October 14, 2022, by the appellants, is principally for stay of execution of those and consequential orders. The appellants are daughters of the late Yohana Omany, the deceased herein, whose estate was the subject of the proceedings at the trial court. They were aggrieved by those orders, hence the appeal. They aver that the respondents have been transferring some of the assets of the estate. They would like the orders stayed pending appeal.



3. The application, dated November 25, 2022, is by the 2<sup>nd</sup> respondent. He too would like the orders in that ruling to be stayed, and an inhibitory order be made to facilitate that, by way of conserving the subdivisions out of Samia/Bukangala A/52. He avers that the 1<sup>st</sup> respondent had unilaterally caused subdivision of the estate asset, and was threatening to have them transferred to 3<sup>rd</sup> parties.
4. The reply to the application is by the 1<sup>st</sup> respondent. She opposes the application dated November 25, 2022, and supports the impugned orders. She accuses the appellants and the 2<sup>nd</sup> respondent of not cooperating with her, and of generally working to disinherit her.
5. The application was canvassed by way of written submissions, and all the sides have filed written submissions, which I have read through and noted the arguments made.
6. The impugned orders were made on a revocation application, by parties who claimed to have had been excluded from the succession cause. The trial court was of the view that the matter was res judicata. The dispute is over distribution of the estate of a dead person. There is need for closure for the parties. If they feel aggrieved by some order made by the court, they would be at liberty to seek the opinion of a higher court. They have exercised that right, by filing the instant appeal, and the orders sought are for preservation of the estate pending appeal. The respondents would suffer no prejudice, for the assets in question are immovable. They are not perishable, and passage of time only increases their value.
7. My inclination is to allow both applications, which I hereby do. To move the matter forward, let the appellants file and serve their record of appeal, within 30 days. The matter shall be mentioned thereafter, for directions. Orders accordingly.

**RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA THIS 28<sup>TH</sup> DAY OF SEPTEMBER 2023**

**WM MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

**Appearances**

Mr. Ouma, instructed by BM Ouma & Company, Advocates for the appellants.

Ms. Kituyi, instructed by AN Moturi & Company, Advocates for the 1st respondent.

Mr. Makokha, instructed by Makokha Wattanga & Luyali, Advocates instructed by the 2nd and 3rd respondents.

