



**In re Estate of Yorita Nyomenda (Deceased) (Succession Cause
250 of 2011) [2022] KEHC 12461 (KLR) (2 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 12461 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
SUCCESSION CAUSE 250 OF 2011**

**REA OUGO, J
AUGUST 2, 2022**

**IN THE MATTER OF THE ESTATE OF YORITA NYOMENDA
(DECEASED)**

BETWEEN

MARIA NYANKOMBA GETATE APPLICANT

AND

FRANCIS NYANG'AU ONGORI OBJECTOR

RULING

1. Francis Nyang'au Ongori (the applicant/objector) seeks a stay of execution of this court's ruling dated December 14, 2021 pending the hearing and determination of the intended appeal in the Court of Appeal.

The respondent Maria Nyankomba Getate has opposed the application.

2. The applicant depones in his supporting affidavit dated February 1, 2022 that he had lodged an appeal and that his appeal in the Court of Appeal has high chances of success. That the petitioner has commenced the distribution process of the assets forming the estate of the late Yorita Nyomenda despite being served with the notice of appeal dated January 28, 2022. That if the application is not granted the filed notice of appeal will be rendered nugatory.
3. The respondent filed grounds of opposition dated the February 18, 2022. In the said grounds she states as follows;

“That there is no appeal pending to warrant the court issue an order of stay of the court's ruling delivered on the December 14, 2021. That an order of stay pending appeal cannot be issued without an appeal and that the court has no jurisdiction to issue the orders as prayed



as its jurisdiction under section 7 of the *Appellate Jurisdiction Act* has not been invoked and that the application is an abuse of court process.”

4. The application was canvassed by way of oral submissions. I have considered the said submissions.
5. I am guided by the provisions of Order 42 rule 6. The application was filed on the January 28, 2022. It was filed within a reasonable period. The second limb is that the petitioner has to demonstrate that he will suffer substantial loss. The applicant claims that the respondent has started to distribute the estate. He does not explain the substantial loss he will incur if the estate is distributed.
6. I find that his affidavit in support of the application is rather vague. The applicant claims he has filed a notice of appeal. That is not a reason to stay proceedings. The balance of convenience does not tilt in the applicant’s favour. In my view the application dated February 1, 2022 has no merit. This is a matter that has been in court since 2011 the estate needs to be distributed.
7. I therefore dismiss the application dated February 1, 2022. Each party to bear their own costs.

DATED, SIGNED AND DELIVERED AT KISII THIS 2ND DAY OF AUGUST, 2022.

R.E. OUGO

JUDGE

In the presence of:

Mr. Nyariki h/b for Mr. Nyagaka For the Objector

Mr. Begi for the Petitioner Absent

Aphline/Emily Court Assistant

