



**Karanja & another v Kamau (Environment & Land Case
22 of 2023) [2025] KEELC 367 (KLR) (6 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 367 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 22 OF 2023
MAO ODENY, J
FEBRUARY 6, 2025**

BETWEEN

DANIEL KARANJA 1ST PLAINTIFF

ANN NGENDO 2ND PLAINTIFF

AND

FREDRICK GITAU KAMAU DEFENDANT

RULING

1. This ruling is in respect of a Notice of Motion dated 7th August, 2024 seeking the following orders:
 - a. Spent
 - b. Spent
 - c. That this Honourable Court be pleased to stay any further proceedings in Kericho Cm Succession Cause No E267 OF 2022 including execution of the confirmation of grant pending the hearing and determination of the originating summons herein.
 - d. That the Court be pleased to grant stay of execution of the ruling dated 25th June, 2024 pending the hearing and determination of the originating summons dated 23rd October, 2023 on record herein.
 - e. That the costs of this application be in the cause.
2. The application was supported by the affidavit of Daniel Karanja, the 1st Plaintiff/Applicant who deponed that the Respondent moved the Court vide an application dated 11th September, 2023 in Kericho CM Succession Cause No E267 of 2023 wherein they sought to have him surrender the title deed of the parcel of land known as Miti Mingi/Mbaruk Block 5/1653 which parcel of land belonged to his late aunt who gifted him before her demise.



3. The Applicant further deponed that on 2nd August, 2024, a Police Officer from Mwariki Police Station called and ordered him to surrender the suit parcel where his family resides and also sent him a copy of the order dated 25th June, 2024 to his wife who is the 2nd Applicant via WhatsApp.
4. The Applicant therefore urged the court to stay the execution of the ruling dated 25th June, 2024 issued in Kericho CM Succession No E267 of 2023.
5. The Defendant/Respondent filed a Replying Affidavit sworn on 3rd September, 2024 and deponed that the Plaintiff/Applicants herein have no direct interest in the suit property as the deceased Rahab Wamuhu Kamau died intestate. The Applicants being in the custody of the certificate of the title to the suit property do not qualify them as beneficiaries.
6. The Respondent further deponed that the Applicants' application for stay of execution of the ruling and subsequent proceedings in CMC Kericho Succession Cause No E267 OF 2022 is unfounded since the Applicants were given a chance to file an objection but they deliberately failed to do so.

Plaintiff/applicants' Submissions

7. Counsel for the Plaintiff/Applicants filed submissions dated 6th November, 2024 and identified the following issues for determination:
 - a. Whether the Applicants have fulfilled the threshold for stay of execution?
 - b. Who should bear the costs?
8. Counsel relied on Article 159 & 40 of *the Constitution* of Kenya, Order 22 rule 22 of the Civil Procedure Rules 2010 and Section 31 of the *Law of Succession Act*. On substantial loss or irreparable harm, counsel submitted that the deceased gave the Applicant the title deed to the parcel of land and the same does not form part of the estate of the deceased. Counsel submitted that the Applicants have shown their valid interest in the suit property and if the execution is allowed to proceed, the same shall result in substantial loss as this is the land upon which the Applicant has been residing since 2007. Counsel relied on the case of *Kiambu Transporters vs Kenya Breweries and RWW vs EKW* [2019] KEHC 6523 (KLR).
9. It was counsel's further submission that the Application herein has been brought without undue delay and the same is urgent, as the court has given orders for the Applicant to surrender the title to the suit property. Further, the Applicant is willing to abide by any condition set down by the Court including the depositing of security for costs as the loss to be occasioned to them is going to be insurmountable and cannot be compensated by damages.
10. Counsel relied on the cases of *Edward Kamau & James Karanja vs Hannah Mukui Gichuki & Gestetner Limited* [2015] KEHC 2563 (KLR) and *Haro Yonda Juaje vs Sadaka Dzenzo Mbauro & Kenya Commercial Bank Limited* [2014] KEHC 6665 (KLR) and urged the court to allow the application with costs.

Defendant/respondent's Submissions

11. Counsel for the Respondent filed submissions dated 6th November, 2024 and identified the following issues for determination:
 - a. Whether the Applicant is entitled to orders sought?
 - b. Whether stay of execution should be granted?



- c. Who should pay the costs of the suit?
12. On the first issue, counsel submitted that the succession court has already proclaimed itself as to the property of the deceased thus rendering the subsequent matter res-judicata. Counsel submitted that the Applicant ought to have filed an objection or an appeal in the succession suit hence this court cannot interfere in a matter that has already been adjudicated upon and the application should be dismissed with costs Counsel relied on the case of Caliph Properties Limited vs Barbel Sharma & Another [2015] eKLR.
 13. On the second issue, counsel relied on Order 42 Rule 6 (2) of the Civil Procedure Rules 2010 and the cases of Vishram Ravji Halai vs Thornton & Turpin Civil Application No Nai 15 of 1990 [1990] KLR 365 and James Wangalwa & Another vs Agnes Naliaka Cheseto and submitted that the Applicants have not established factors which will show that the execution will create a state of affairs that will irreparably affect or negate this process and thus they will not suffer substantial loss beyond irreparable damage.
 14. Counsel submitted that the applicant was fully aware all along that the Succession Cause was ongoing, should have moved the court, filed an objection, and not wait until the grant had been confirmed and orders issued.
 15. It was counsel's submission that this court has no jurisdiction to interfere with the jurisdiction of the Succession Court which issued the said orders. Counsel urged the court to dismiss the application with costs.

Analysis And Determination

16. The issues that arise for determination are as to whether this court has jurisdiction to grant the orders sought by the Applicant and Whether the court should issue an order staying any further proceedings in Kericho Cm Succession Cause No E267 OF 2022 pending the hearing and determination of the originating summons herein and whether this court should grant stay of execution of the ruling dated 25th June, 2024.
17. In the case of William Odhiambo Ramogi & 2 Others v the Honourable Attorney General & 3 Others [2019] eKLR, the Court articulated six definitive principles governing the grant of stays of proceedings pending appellate determination of interlocutory matters. They include:
 - a. First, there must be an appeal pending before the higher Court;
 - b. Second, where such stay is sought in the Court hearing the case as opposed to the higher Court to which the Appeal has been filed and there is no express provision of the law allowing for such an application, the Applicant should explain why the stay has not been sought in the higher Court. This is because, due to the potential of an application for stay of proceedings to inordinately delay trial, there is a policy in favour of applications for stay being handled in the Court to which an appeal is preferred because such a Court is familiar with its docket and is therefore in a position to calibrate any order it gives accordingly;
 - c. Third, the Applicant must demonstrate that the appeal raises substantial questions to be determined or is otherwise arguable;



- d. Fourth, the Applicant must demonstrate that the Appeal would be rendered nugatory if the stay of proceedings is not granted;
 - e. Fifth, the Applicant must demonstrate that there are exceptional circumstances which make the stay of proceedings warranted as opposed to having the case concluded and all arising grievances taken up on a single appeal; and
 - f. Sixth, the Applicant must demonstrate that the application for stay was filed expeditiously and without delay.”
18. It should be noted that this is not an Appeal or a miscellaneous application. It is an Originating Summons seeking orders of adverse possession. This is an Environment and Land Court whose mandate is established under Section 13 of the Land and Environment Court. Environment The Applicants have sought stay of proceedings of a Succession matter including execution of a confirmation of a grant before this court being an Environment and Land Court.
19. There are laid down procedures under The Succession Act Cap 160 on how to challenge a Succession Cause if you are dissatisfied or not included as a beneficiary. A party has a right to file an objection to the Cause and shall be given an opportunity to be heard. If a grant was confirmed without their knowledge, then they have a recourse to file an application for revocation or annulment of the grant. That is not what the Applicant is asking for and this would not be the right court to file such a claim
20. The Applicant had all these options for redress but never considered them. This court does not have the requisite jurisdiction to hear and determine this application, firstly if the Applicant was aggrieved or wanted to stay the proceedings then they should have filed the application in the High Court. On jurisdiction, each court must stick to its lane and not encroach on the other’s space.
21. Consequently, I find that this application lacks merit and is dismissed with costs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 6TH DAY OF FEBRUARY 2025.

M. A. ODENY

JUDGE

