



**Jama v Abdullahi (Civil Appeal E070 of 2024)
[2025] KEHC 290 (KLR) (Family) (23 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 290 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
CIVIL APPEAL E070 OF 2024
HK CHEMITEI, J
JANUARY 23, 2025**

BETWEEN

FATUMA BAHSAN AHMED JAMA APPLICANT

AND

MOHAMED HUSSEIN SHEIK ABDULLAHI RESPONDENT

RULING

1. In her Notice of Motion dated 11th June 2024 seeks orders that;
 - (a) Pending the hearing and determination of the appeal herein there be stay of execution of the order issued on 4th June 2024 in succession cause E115 of 2022 in the estate of the late Mohamed Suleyman Issaq.
 - (b) Costs be provided for.
2. The application is based on the grounds thereof and the Applicant's sworn affidavit dated the same date.
3. The basis of the application is the ruling by the honorable Kadhi on 3rd June 2024 in which he revoked the grant issued to the Applicant and permitted the Respondent to be the sole administrator of the estate of her late husband.
4. Coupled with these the trial court went ahead to direct that she deposits Kshs 3,120,477 to the court which was rental income from land parcel number Nairobi Block 97/116 as well as 50% of the rental income from the month of May 2024 from the said apartment.
5. The court further directed that the Applicant deposits with the court 50% of the rent collected from land reference Number 209/13284/ 8 situate in south C.



6. She deponed that property Number 209/13284/8 is registered in her name and she is currently unemployed and 60 years old and any denial of her rights over the same will render her destitute as the same does not form part of the estate of her late husband.
7. She averred that the Respondent has not been declared to be a beneficiary to the deceased estate and thus cannot effectively claim rights over the same. She said that the Respondent was making efforts to dispose the property Number 97/116. He ought therefore not to be allowed to manage the same.
8. The application has been vehemently opposed by the Respondent vide his replying affidavit dated 28th June 2024. He deponed that the Applicant had already divorced his late brother and that prior to this there was a case pending at ELC Number E072 OF 2021.
9. That it was after he passed on that she came back to claim the estate. The parcel of land namely LR NO 209/13284 /8 was initially jointly registered between the deceased and the Applicant as tenants in equal shares but she fraudulently transferred to herself hence the suit at the above court.
10. The Respondent went on a lengthy discourse to establish how the two properties have been managed and or mismanaged and that is why the trial court granted the orders it did. That the orders the court gave were intended to preserve the estate from misappropriation.
11. The application he stated if not granted cannot therefore render the Kadhis orders nugatory as the amount collected will in any event be deposited in court for the benefit of all the beneficiaries.
12. The parties were directed to file written submissions which they did and the court has perused the same extensively together with the cited authorities.
13. Both submissions largely borrow from the affidavits which are already on board and which I have referred to including the supplementary affidavit by the Applicant dated 19th July 2024. I therefore need to reproduce them here.
14. It is clear that any party wishing to have the orders sought herein must satisfy the provisions of Order 42 rule 6 namely whether substantial loss will be incurred if the orders are not granted, that the application has been made without undue delay, whether there is need to provide any security and if the appeal will be rendered nugatory if the orders are not granted.
15. The issue of whether the application was made without any delay has been dealt with looking at the speed with which the Applicant approached this court.
16. As to the question of loss I think the same must be seen in the prism of what has been happening before and during the case at the trial court. There is no doubt that the main battle is at the ELC court where the said court ought to determine the true ownership of the two properties. That is between the Applicant and the estate of her deceased husband.
17. This court cannot for now make any such deduction for want of jurisdiction and more importantly after the Kadhis court has determined the succession cause before it.
18. Looking at the ruling by the Honorable Kadhi I do not for now find any prejudice to be suffered by the Applicant. The essence of the same is to maintain the status quo and preservation of the estate pending distribution.
19. Neither do I find that the appeal shall be rendered nugatory. The issues are clear and the capital assets of the estate are secure. There is no evidence of any danger of disposal by any of the parties. The only issue the trial court did was to ensure smooth management of the same while awaiting final determination.



20. The parties should apart from this cause priorities the matter at the ELC court since that will essentially unlock the question bedeviling property number 209/13284/8 which I think has more questions than answers.
21. For the above reasons the application is unmerited and the same is disallowed. Let the parties process the appeal expeditiously.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 23RD DAY OF JANUARY 2025.

H K CHEMITEI

JUDGE

