



**In re Estate of John Njonjo Muiruri (Deceased) (Family Appeal
E013 of 2023) [2025] KEHC 2183 (KLR) (17 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2183 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
FAMILY APPEAL E013 OF 2023**

MW MUIGAI, J

FEBRUARY 17, 2025

IN THE MATTER OF THE ESTATE OF JOHN NJONJO MUIRURI (DECEASED)

BETWEEN

GRACE WAIRIMU NJONJO 1ST APPELLANT

LUCY NJAMBI NJONJO 2ND APPELLANT

AND

RACHEL NJAMBI NJONJO 1ST RESPONDENT

NAOMI WANJIRU MBUTHIA 2ND RESPONDENT

*(Being an Appeal against part of the ruling delivered on 31st October,
2023 by Hon D.N Sure ,Principal Magistrate in MCSUCC no 232 of 2019)*

JUDGMENT

Notice Of Motion

1. Vide an application dated 22.11.2023 brought under Order 22 Rule 22 (1) , Order 42 (6) of the Civil Procedure Rules, Section 1,1A, 3,3A and 63 (e) of the Civil Procedure Act, the Appellants/Applicants seek the following orders from this court, that;
 - a. Spent
 - b. This Honourable Court do order for stay of proceedings in Kangundo MCSUCC No 232 of 2019 coming up for mention on 26th January 2024 pending the hearing and determination of this application and intended appeal.
 - c. This Honourable court do set aside and/or revise part of the ruling delivered on 31st October by stopping and/or prohibiting the Registrar of companies from rectifying the register of



Mwanzo properties and Management Limited and Mwanzo Management Agencies Limited pending the hearing and final determination of this application and intended appeal

- d. The costs of this application be provided for.
2. The application is supported by the affidavit of Lucy Njambi Njonjo sworn on an even date who deposed that the parties herein are beneficiaries of the estate of John Njonjo Muiruri who died on 21.08.2018.
3. It was contended that the deceased herein relinquished and/or resigned from being a shareholder and/or director of both Mwanzo Management Agencies Limited and Mwanzo Properties and Management Limited on 21.05.2018 and 07.06.2018 respectively and transferred his shares as follows;
 - a. Mwanzo Properties and Management Limited
 - i. Tabitha Njonjo 500 shares
 - ii. Lucy Njambi Njonjo 500 shares
 - iii. Stella W. Nyamu 500 shares
 - b. Mwanzo Management Agencies limited
 - i. Faith Njonjo 300 shares
 - ii. Grace Wairimu Njonjo 700 shares.
4. It was contended that they have been running the companies smoothly without any interference or complaint. After the demise of the deceased herein, they together with the Respondents and other beneficiaries petitioned for letters of administration and listed the assets that belonged to the deceased before his demise and since he had resigned from the above named companies, it was contended that the two companies never formed part of the estate.
5. It was deposed that on 31.10.2023, the Trial Magistrate delivered a ruling directing DCI-Matungulu sub county to conduct investigations to established whether or not any forgery was done on account of the resignation of the deceased as a director in the two companies named herein and also ordered that the registrar of companies to effect the changes on the companies register without awaiting the outcome and/or results of the forensic investigation.
6. The Applicant contended that they are not opposed to the investigation and that the registrar of companies is likely unlawfully effect the said changes on the companies which are not part of the estate. As a result, the Applicants are likely to suffer irreparable loss and damage in the event the changes are effected. It was contended that the appeal had a high chance of success.

Responses

7. The Application is unopposed, the parties makes reference to a replying affidavit but there is none in the court file nor in the CTS.

Further Affidavit

8. The 2nd Respondent denied concealing any facts when applying for the Petition of letters of administration. She stated that as new directors of the company, they have adjusted there shareholding as follows;
 - a. Mwanzo Properties and Management Limited



- i. Tabitha Njonjo 500 shares
 - ii. Lucy Njambi Njonjo 500 shares
 - b. Mwanzo Management Agencies limited
 - i. Faith Njonjo 300 shares
 - ii. Grace Wairimu Njonjo 700 shares.
9. It was contended that the company that belongs to the estate is Mwanzo Properties Limited which has 700 shares in the name of the deceased which shares are still intact and the 2nd appellant has annexed a copy of CR12 dated 20.09.2013. They denied forging the signatures of the late John Njonjo Muiruri as appearing in the letters of resignation and share transfer deeds and subsequently transferred the shareholding to two companies among themselves. It was deposed that there was no evidence of forgery.
10. The application was canvassed by way of written submissions.

Appellant's Submissions Dated 13.09.2024 & 09.10.2024

11. The Appellant submitted on three issues. First, that the trial magistrate misdirected herself in ordering the registrar of companies to effect changes in the company register and include the name of the deceased herein as the director of both Mwanzo Properties Limited and Mwanzo Management agencies Limited. It was contended that the learned magistrate defeated and pre-empted the very forensic investigations she ordered done by DCI. That once the DCI report was filed, it indicated that there was no forgery by the appellants or any beneficiaries hence on that account the learned magistrate misdirected herself.
12. Secondly, it was submitted that after the demise of the deceased herein, the directors of Mwanzo properties and Management limited are Tabitha Njonjo and Lucy Njambi Njonjo. That the name of the name of the deceased does not appear as a director of the company as per the CR12 as wrongly ruled by the trial magistrate.
13. The Applicant contended that the deceased seized to be a directors Mwanzo properties and management Limited and Mwanzo Management Agencies limited on 7th June 2018 and 21st May 2018 respectively and by the time he died on 21st August 2018, he had seized being a director.
14. It was submitted that if the court does not intervene as requested by the Appellants, then the registrar will go against the wishes of the deceased. Reliance was placed on the cases of Port Florence Community Health Care versus Crown Health Care Limited and Ephantus Mwangi & Another vs Duncan Mwangi Wambugu (1982) -88 KAR 278
15. In addition, It was submitted that the Appellants have demonstrated that the two companies do not form part of the estate and if stay is granted, the Applicants will suffer irreparably. According to the Applicant, the Trial Magistrate ordered for rectification of the register because of suspected forgery and not because of intermeddling. Further , that the case of Madison Maroko Nyamweya vs Benard Magara Maroko & Another [2016] e KLR and Estate of Kaswant Singh Dhanjal (deceased) [2016] eKLR are distinguishable and cannot apply in the instant case since both cases refer to the property of a deceased person which is not the case here.



16. the Applicant avered that the Trial Magistrate erred in that she mistook Mwanzo Properties Management Limited and Mwanzo Properties Limited to be the same company yet they are two different companies.

1st & 2nd Respondent's Submissions Dated 23.09.2024

17. Whilst relying on section 45 of the *Law of Succession Act* and the cases of *Madison Maroko Nyamweya vs Benard Magara Maroko & Another* [2016] eKLR and *Estate of Kaswant Singh Dhanjal (deceased)* [2016] eKLR, It was submitted that despite the report having exonerated the beneficiaries, it did not categorically state that the alleged signatures belonging to the deceased in the resignation letter dated 7th June 2018 and 21st May 2018, the affidavit sworn on 7th June 2018 and 21st May 2018 and the transfer deeds dated 7th June 2018 and 21st May 2018 are that of the deceased. According to the Respondent, where there is doubt as to the signatures of the deceased, then the court should exercise its discretion as it rightly did and order that the deceased be included as a director of the subject companies.
18. As to the question of whether the Application is merited, it was submitted that the Appellants who are the administrators of the estate had not denied intermeddling with the estate of the deceased in exclusion of the Respondents.
19. Their contention is that neither the 2nd Respondent was a wife to deceased nor Miriam Wairimu Njonjo was a daughter to the deceased and failed to prove these allegations and to prove that there was no forgery in obtaining the shares of the deceased from the subject companies.
20. While relying on the cases of *William Odhiambo Ramogi & 3 others vs Attorney General & 6 others; Muslims for Human Rights & 2 others (interested parties)* [2020] e KLR and *Mbiti & Another vs Thome & another* [2024] KEHC 5441 KLR, it was submitted that the appeal and the stay application were not merited and thus should be dismissed.

Determination

21. I have considered the Application, the Trial court record and the submissions of the parties and find that the issues for determination are;
- a. Whether the Applicant is entitled to an order for stay of proceedings in pending the hearing and determination of the intended appeal.
 - b. Whether this Honourable can set aside and/or revise part of the ruling delivered on 31st October, 2023
22. Order 42 Rule 6 (2) of the Civil Procedure Rules provides that;
- No order for stay of execution shall be made under subrule (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
 - (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
23. The decision was rendered on 31st October 2023, this Application was filed on 22nd November 2023, 22 days later. There is a Memorandum of Appeal on record dated 22nd November 2023. I therefore find that there was no unreasonable delay.



24. The second issue is that of substantial loss. Substantial loss was discussed in the case of James Wangalwa & Another vs. Agnes Naliaka Cheseto [2012] eKLR, as:

“No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process. The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the applicant as the successful party in the appeal ... the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.”

25. The Appellant contend that he will suffer substantial loss if the orders granted are complied with. However, I note that the Appellant has submitted on all the grounds of appeal as opposed to the orders being sought at this juncture. The forensic report that the parties refer to cannot be considered by this court as it is not the one that made the order and secondly, it is an appellate court and thus can only consider what the Trial Court has been able to consider. That will be putting the cart before the horse. If there are any issues with the ruling whether towards compliance or failure to do so, then the same should be raised before the Trial court.

26. The last limb is that of deposit of security, in this case there is no proposal of deposit of security and there is no way to secure the interests of both parties. This is not a money decree.

27. I find that the Applicant has not demonstrated substantial loss and has failed to satisfy the grounds for issuance of orders of stay of proceedings.

28. The second issue is whether the court can set aside and/or review part of the ruling delivered on 31st October, 2023. I am guided by Order 45 of the Civil Procedure Rules states as follows:

(1) Any person considering himself aggrieved—

(a) By a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

(b) By a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.

29. This Court in Bouchard International (Services) Ltd v M'mwereria [1987] KLR 193 held that;

“It is clear that the Court of Appeal should not interfere with the discretion of a judge acting within his jurisdiction unless the court is clearly satisfied that he was wrong. But the court is not entitled simply to say that if the Judge had jurisdiction and had all the facts before him the Court of Appeal cannot review his order, unless he has shown to have applied wrong principle. The court must, if necessary, examine anew the relevant facts and circumstances, in order to exercise by way of review a discretion, which may reverse or vary the order. Otherwise in interlocutory matters, the Judge might be regarded as independent



of supervision. Yet an interlocutory order of the Judge may often be of decisive importance on the final issue of the case, and may be one, which requires a careful examination by the Court of Appeal.”

30. In *Paul Mwaniki vs. National Hospital Insurance Fund Board of Management* [2020] eKLR, it was said:

“... a review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.”

31. Upon perusal of the court record, the Applicant seeks this Court to revise the Ruling of the Trial Court of 31st October 2023 whose Final Orders read as follows;

- i. That an order is hereby issued that the removal of John Njonjo Muiruri (deceased) as Director/ Shareholder of Mwanzo Properties & Management Limited and Mwanzo Management Agencies Limited is illegal, null and void and amounts to intermeddling with the estate.
- ii. That an order is hereby issued that the resignation letter, share Certificate, transferring the shares of the Deceased Mwanzo Properties & Management Limited and Mwanzo Management Agencies Limited to the Respondents [to] be subjected to handwriting analysis by the DCI-Matungulu Sub County. For the avoidance of Doubt, the signatures should be compared with those of all the beneficiaries.
- iii. The Registrar of Companies is hereby directed to rectify the Register of Mwanzo Properties and Management Limited and Mwanzo Management Agencies by deleting the particulars of reflect John Njonjo Muiruri pending the conclusion of the case.
- iv. That the beneficiaries are hereby prohibited by themselves, their agents or servant and employees from intermeddling with the estate of the deceased pending hearing and determination of the suit.
- v. That the Respondents are hereby directed to provide the List of ALL properties as of 21/8/2018, within 30 days under Mwanzo Properties & management Limited & Mwanzo management Agencies Limited.
- vi. The matter will be mentioned on 26/1/2024 for further directions.

32. These are the orders of the Court but number (iii) seems to be the bone of contention that made Applicants seek/appeal/review on the basis of stay of proceedings in Kangundo MCSUCC No 232 of 2019 coming up for mention on 26th January 2024 pending the hearing and determination of this application and intended appeal.

33. And this Court to set aside and/or revise part of the ruling delivered on 31st October by stopping and/or prohibiting the Registrar of companies from rectifying the register of Mwanzo properties and Management Limited and Mwanzo Management Agencies Limited pending the hearing and final determination of this application and intended appeal.

34. Stay of Proceedings is granted in the following situations or circumstances;



35. In *Kano Kajulu Farmers Co-operative Society Limited v County Lands Registrar, Kisumu & another* (Environment & Land Case 46 of 2018) [2025] the Court held;

“The ground for grant an order of stay of proceedings as held in the case of *Kenya Wildlife Services -vs- James Mutembei* (2019) eKLR where the court held that stay of proceedings should not be confused with stay of execution pending appeal. That stay of proceedings is a grave judicial action which seriously interferes

with the right of a litigant to conduct his litigation. That the test for stay of proceedings is higher and stringent.”

36. In *Re Global Tours & Travel Ltd*, High Court Winding up Cause No.43 of 2000, Ringera J. stated the factors to be considered whether to grant a stay of proceedings or not as follows:

“As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of justice...the sole question is whether it is in the interest of justice to order for stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the Court should essentially weigh the pros and cons of granting or not granting the order. And, in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously.”

37. These conditions have not been demonstrated herein, the matter is one where a cursory reading of the orders was a typo or missing word.

38. This Court understands the order (iii) if completed and read logically, is to direct Registrar of Companies to delete any [entry] of the said John Njonjo Muiruri (deceased) replacement /transfer of his shares as Director/Shareholder of the 2 Companies [as reading Order (i) the Court found it all suspicious and it amounted to intermeddling of the estate of the deceased and therefore ordered investigations through DCI and it is not as suggested that the Registrar of Companies was to enter the new shareholders in the Register [after all the proceedings of alleged transfer of shares on 21/5/2018 signed by 1st Respondent alone and Affidavit of 7/6/2018 where allegedly the deceased ceased to be Director of the 2nd Company are matters hotly contested]

39. This Court agrees with the Trial Court that the deceased was terminally ill and yet towards the end in the months of May & June he seemed very active and busy releasing and transferring shares to some of his family members to the exclusion of others only to rest in August 2018. Something does not sit right and the Trial court correctly ordered investigations to commence and deletion of any transfer of shares removing the deceased and replacing him in both Companies after his death to be removed pending investigations outcome.

Disposition

1. Therefore, the typo in the Trial Court Ruling of 31/10/2023 ought to be placed before the Trial Court for correction of error or typo as granted by law under Sections 99 & 100 of [Civil Procedure Act](#).
2. This Court finds no legal basis to stay proceedings as none of the stringent conditions have been proved to warrant the said order and the intended appeal is premature.



3. The deceased had 3 houses let each house be represented by an Administrator
4. In the absence of a written valid Will of the deceased or proved gift inter vivos all property of the deceased's estate shall be disclosed to the Trial Court for administration and distribution to ALL proved Beneficiaries of deceased's estate.
5. The original Trial Court file shall hereby be returned to Kangundo
6. Law Courts to the Trial Court for hearing and determination of the Succession Cause
7. This is a family matter no orders to Costs.

JUDGMENT DELIVERED SIGNED & DATED IN OPEN COURT AT MACHAKOS HIGH COURT ONLINE ON 17/2/2025.

M.W.MUIGAI

JUDGE

