



In re Estate of Mary Wanjiku Wangaruro (Deceased) (Succession Cause 1075 of 2019) [2025] KEHC 928 (KLR) (Family) (4 February 2025) (Ruling)

Neutral citation: [2025] KEHC 928 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

SUCCESSION CAUSE 1075 OF 2019

EKO OGOLA, J

FEBRUARY 4, 2025

IN THE MATTER OF THE ESTATE OF MARY WANJIKU WANGARURO (DECEASED)

BETWEEN

SARAH NDUTA WANGARURO 1ST APPLICANT

TERESIA WAMBUI WANGARURO 2ND APPLICANT

JOHN MUNGAI KINYANJUI 3RD APPLICANT

AND

DOROTHY KAJUJU KIMATHI RESPONDENT

RULING

1. The application before this court is dated 27th March 2024. The applicants pray for the following prayers:-
 - a. Spent;
 - b. That the honorable court be pleased to set aside Olenguruone/Keringet Block 2/319 (hereinafter, the property) pending the hearing and determination of HCCOMMISC/E183/2024 Sarah Nduta Wangaruro & 2 Others (suing as administrators of the Estate of the late Mary Wanjiku Wangaruro) versus Dorothy Kajuju Kimathi, Maina Njue and Bernard Kariuki Njoroge and proceed to confirm the Summons for Confirmation dated 24th March 2023 as prayed therein.
 - c. That in the alternative to prayer (b) above, the honorable court be pleased to stay any further proceedings pending the hearing and determination of HCCOMMISC/E183/2024 Sarah



Nduta Wangaruro & 2 Others (suing as administrators of the Estate of the late Mary Wanjiku Wangaruro) versus Dorothy Kajuju Kimathi, Maina Njue and Bernard Kariuki Njoroge.

- d. That the cost of this application be provided for.
2. The application was based on the grounds set out therein and the applicants' joint Supporting Affidavit. The applicants deposed that the case of HCCOMMISC/E183/2024 seeks to set aside an irregular ex-parte judgment obtained by the respondent where she is claiming the property known as Olenguruone/Keringet Block 2/319. According to the applicants, on 1st March 2024, the court in HCCOMMISC/E183/2024 issued a stay preventing inter alia all dealings with the said property. Therefore, these proceedings should be stayed to avoid conflicting orders and further prejudice the applicants' legitimate legal interest in the property. The applicants deposed that the respondent does not stand to be prejudiced as the applicants are the parties who have been in ownership, occupation, and possession of the property.
 3. In response to the application, the respondent filed a Replying Affidavit where he deposed that she filed a case (CMCC 8205 of 2004) against the deceased, who owed her Kshs. 207,448/-. In 2004, she obtained a judgment in her favour. The respondent further stated that the applicants then filed HCCOMMISC/E183/2024. According to the respondent, the applicant filed the suit with malice to delay and derail the finalisation of this instant matter.
 4. The respondent further deposed that if the property is left out of the Certificate of Confirmation of Grant and without valuation, the same may not be adequate should the decretal amount, costs, and interest exceed the value of the property. The respondent deposed that there is no urgency in confirming the other properties as she is the one who initiated these succession proceedings, having filed a citation. However, the applicants delayed in petitioning for letters of administration.
 5. The application was canvassed by way of written submissions which I have read and considered.

Determination

6. I have considered the application, the rival affidavits and submissions. Stay of proceedings should not be confused with stay of execution pending appeal. Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on the right of access to justice, the right to be heard without delay and overall, the right to a fair trial. Therefore, the test for the stay of proceeding is high and stringent. The sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted.
7. In deciding whether to order a stay, the court should weigh the pros and cons of granting or not granting the order. In considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the scarcity and optimum utilisation of judicial time and whether the application has been brought expeditiously.
8. In the case of Kenya Wildlife Service Vs James Mutembei (2019) eKLR, Gikonyo J quoted Halsbury's Law of England, 4th Edition. Vol. 37 page 330 and 332, that:

“The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore, the court's general practice is that a stay of proceedings should not be imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue.” This is a power which, it has been emphasised, ought to be exercised sparingly and only in exceptional cases.” It will be exercised where the proceedings are shown to be



frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground must show not merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case”.

9. I am persuaded by the aforementioned authority which lays down the clear principles that the stay of proceedings is a grave matter to be entertained only in the most deserving cases as it impacts the right to expeditious trial. It is a discretionary power exercisable by the court upon consideration of the facts and circumstances of each case.
10. In this instant application, the applicants pray for the stay of these proceedings with regard to the confirmation of Olenguruone/Keringet Block 2/319 on the grounds that there is a pending case seeking a claim to the property. The respondent argues that a judgment was issued in her favour and the applicants’ claim in HCCOMMISC/E183/2024 that she obtained the said judgment irregularly is a ploy to delay her enjoying the fruits of her judgment. The respondent, in her affidavit also deposed that there is no urgency in confirming the estate, as she may have a further claim to other properties belonging to the deceased estate.
11. It is not contended that there is a judgment awarding the respondent a share of the property. The court in HCCOMMISC/E183/2024 ordered a stay preventing inter alia all dealings with the said property. Giving conflicting orders will impede the interest of justice. Furthermore, I am not satisfied that there should be further stay of confirmation of the remainder of the estate.
12. The upshot is that I partly allow the application dated 27th March 2024. There shall be a stay proceedings with regard to the confirmation of Olenguruone/Keringet Block 2/319 until the hearing and determination of HCCOMMISC/E183/2024. The applicants are at liberty to set a date for the hearing and determination of the Summons for Confirmation of Grant for the remainder of the estate. Orders be in the cause.

Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 4TH DAY OF FEBRUARY 2025

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E.K. OGOLA

JUDGE

In the presence of:

Ms. Muigai for the Applicants

N/A for the Respondent

Gisiele Muthoni Court Assistant

