



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Christopher Maina Kihumba (Deceased) (Civil Appeal  
E305 of 2024) [2025] KEHC 5055 (KLR) (24 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5055 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CIVIL APPEAL E305 OF 2024  
FN MUCHEMI, J  
APRIL 24, 2025**

**BETWEEN**

**MARGARET WANJIKU MAINA ..... APPELLANT**

**AND**

**LILIAN WANGECHI MAINA ..... 1<sup>ST</sup> RESPONDENT**

**JOSEPHINE NJOKI MAINA ..... 2<sup>ND</sup> RESPONDENT**

**MARY NG'ENDO MAINA ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

**Brief Facts**

1. The application dated 6<sup>th</sup> November 2024 seeks for orders of stay of proceedings in Ruiru CM Succession Cause No. E138 of 2024 pending the hearing and determination of the appeal against the ruling delivered on 30<sup>th</sup> October 2024.
2. In opposition to the application, the respondent filed a Replying Affidavit dated 23<sup>rd</sup> December 2024.

**Appellant's/Applicant's Case**

3. The applicant states that on 21<sup>st</sup> December 2022, she was appointed the administrator of the Estate of her late husband, the deceased. The respondents filed Summons for Revocation of grant dated 20<sup>th</sup> December 2023 but the same was dismissed on 15<sup>th</sup> March 2024. The applicant states that in the said ruling, the trial court found that she was the core contributor to the estate and directed them to agree on the free property of the deceased.
4. The applicant avers that while she was looking for a meeting with the respondents, the respondents went back to court for reasonable maintenance. On 30<sup>th</sup> October 2024, the trial court delivered a ruling



requiring her to pay each of the respondents Kshs. 50,000/- every month beginning November 2024. Being aggrieved by the said ruling, the applicant states that she has filed a Memorandum of Appeal.

5. The applicant argues that her appeal is highly meritorious with overwhelming chances of success. The applicant further argues that the learned trial magistrate erred having found that they had not agreed on the free property of the deceased, directed her to pay each of the respondents Kshs. 50,000/- per month. Further the trial court erred by directing for payment to the respondents without establishing the monthly income and expenditure of the estate.
6. The applicant states that the said order is too broad and capable of abuse as it does not specify where the Kshs. 50,000/- should come from.
7. The applicant states that the said order amounts to a partial confirmation of grant whereas no such application has been made. Further the same amounts to intermeddling with the estate under Section 45 of the *Law of Succession Act*.
8. The applicant further states that the trial court granted orders to the respondents that it initially refused to give, thus the court is sitting on its own appeal.

### **The Respondents' Case**

9. The respondents state that their mother was appointed an administrator of the estate of their late father in 2022, but she has completely refused to apply for confirmation of grant as required by law. The respondents argue that the refusal to apply for confirmation of grant is deliberately orchestrated at denying and delaying their rightful inheritance as it has been two years since the grant was issued.
10. The respondents state that they applied for revocation of grant on 23<sup>rd</sup> December 2023, a year after grant of letters of administration had been issued but the trial court dismissed their application. In the said ruling, the trial court directed that all parties seek mediation but all their efforts to dialogue with the applicant were futile and she told them to get married as they did not have a share in their father's estate.
11. The respondents aver that the applicant had a tumultuous relationship with the deceased and even instituted divorce and matrimonial proceedings against him which is a testament of her selfish nature. The respondents further aver that the applicant has always been a housewife and everything comprising of the estate was solely acquired by the deceased and all the properties registered in his sole name.
12. The respondents state that it is upon the applicant's failure to engage them in dialogue that they instructed their advocates on record to apply for provision from the estate as they are currently financially constrained owing to the applicant's incessant interference with their business situated within the estate.
13. The respondents state that they have further sought to have the applicant account for the estate and to be compelled to distribute the estate which she is mandated to do as an administrator under the *Law of Succession Act*. The respondents aver that the appellant was ordered to provide a sum of Kshs. 50,000/- to each one of them which orders she does not want to comply with forcing their advocates to follow her up on the same.
14. The respondents state that the estate comprises of rental blocks in Zimmerman and Ruiru which generate an income that exceeds Kshs. 700,000/- per month and which the applicant has been solely enjoying despite having being at the verge of divorce with the deceased prior to his mysterious demise. The respondents further state that the applicant shall not suffer any prejudice by giving them each Kshs. 50,000 per month as the said amount is just a drop in the ocean given he income that the estate



- generates. The respondents further state that the income has increased beyond what is represented by the statements as they do not include income from Ruiru houses which the deceased completed at the time of his demise.
15. The respondents argue that confirmation of the grant is a mandatory legal requirement and they fail to understand which provision of the *law of succession Act* the applicant will be offending by complying with the said orders and why she has continued to benefit from the deceased's estate while labelling their demand for provision as intermeddling of the deceased's estate.
  16. The respondents aver that they have learnt that the applicant filed another application in Ruiru Magistrate's Court Miscellaneous Succession Cause No. E001 of 2022 in which she sought to access the deceased's bank accounts and which she did not disclose to them and they came to learn about it on 24<sup>th</sup> January 2024 when their advocate on record saw it listed on the cause list. The respondents argue that the applicant by trying to access the deceased's bank accounts amounts to intermeddling.
  17. The respondents aver that by staying the trial court's ruling on their provision, they shall suffer great prejudice as they are already suffering yet the estate is big enough to sufficiently provide for all of them.
  18. The respondents argue that the instant appeal is a guise to delay and deny justice to them and the application is a way of the applicant frustrating them and making good her threats while she continues to enjoy what their father worked for so hard with her current lover who enjoys more access and control of their father's estate than them.
  19. The respondents state that the trial court did not sit on its own appeal as the applications filed were different and were seeking different orders.
  20. The applicant filed a Further Affidavit dated 14<sup>th</sup> February 2025 and states that the respondents cannot accuse her of delaying the matter when they rushed to court for an application of provision yet the trial court had earlier directed that they attempt mediation to establish what comprised of the free estate of the deceased.
  21. The applicant states that it is morally reprehensible and an abomination for a child to discuss the marital relationship of their parents in public. In any event, the applicant avers that she was never a housewife as the trial court found as a fact that she was the core contributor of the estate of her late husband and no appeal has been preferred against the said findings.
  22. The applicant avers that in regard to the income of Kshs. 700,000/- per month, no material evidence has been tendered by the respondents to support such a contention. Furthermore, the photos annexed by the respondents do not say anything about the income.
  23. The applicant states that she has given the respondents places to live and businesses to run and they all have decent incomes enough to sustain them.
  24. The applicant avers that the respondents have not placed any material to show that she has filed another succession cause. Furthermore, if such succession cause exists, nothing prevents the respondents from joining it.
  25. Parties put in written submissions.

### **The Applicant's Submissions**

26. The applicant relies on the case of William Odhiambo Ramagi & 2 Others vs The AG & 3 Others (2019) eKLR and submits that she has met the conditions for the grant of orders of stay of proceedings. The applicant further submits that the order of the trial magistrate for her to pay a monthly sum



of Kshs. 150,000/- to the respondents in perpetuity is injuries to her as the payment can only come from the free estate of the deceased which has not been settled. Thus, the applicant argues that such payments shall amount to a partial confirmation of grant before the application is made.

27. The applicant submits that if stay is not granted, she will be required to make those payments without any hope of recovery when the appeal eventually succeeds and if she does not pay, she faces contempt. The applicant submits that on the filing of the confirmation within 60 days, she has already demonstrated that it is not practically possible in all circumstances to comply with the said order.

### **The Respondents' Submissions.**

28. The respondents rely on Order 42 Rule 6(2) of the Civil Procedure Rules and the cases of Trust Bank Ltd vs Paramount Universal Bank Limited & 2 Others (2009) eKLR and Mbiti & Another vs Thome & Another (Civil Appeal E010 of 2024) [2024] KEHC 5441 (KLR) (20 May 2024) and submits that the applicant failed to demonstrate what substantial loss she will suffer in the event the orders sought are not granted. The respondents submit that the applicant has failed to prove the estate's inability to provide the amounts as ordered nor has she offered an alternative how they can benefit from the estate pending confirmation of grant.
29. The respondents submit that the pictures of the rental houses and statements of income collected from a few of the houses show the income generated from the estate on a monthly basis. The respondents further submit that the applicant has been controlling the entire income generated therefrom without caring for them yet they are equally entitled. The respondents submit that the provision of Kshs 150,000/- was granted in their favour as they are children of the deceased and were dependent on him and the estate during his lifetime and the order of stay is a clear indication of the applicant's intention to curtail their benefit from the estate.
30. The respondents rely on Section 71 of the *Law of Succession Act* and provide that it is more than two years ago and the applicant has not taken any steps to have the grant confirmed. The respondents submit that the applicant failed to distribute the estate that she is solely benefiting from and to their detriment. Thus the rightful way of fairly and expeditiously concluding the succession proceedings is to have the grant confirmed and the estate distributed. The applicant has clearly failed in performing her duties and responsibilities as an administrator of the estate and is unfortunately misusing the honourable court to justify her failure to bring the succession cause to rest. The respondents submit that the estate stands to suffer more harm by suspending the proceedings and the ruling issued by the lower court. The respondents further submit that the court is obligated to obviate hardship, expense and delay and instead place focus on substantive justice which will only happen if the matter in the lower court is fully settled.
31. The respondents argue that the 60 days period given by the court for parties to apply for confirmation of grant is sufficient and the applicant has not adduced any evidence to confirm that the assets are not free for distribution nor substantiated why the time limit is insufficient.

### **The Law**

#### **Whether the applicant has met the conditions for grant of stay of proceedings pending appeal.**

32. It is trite law that whether or not to issue an order for stay of proceedings is a matter of the court's discretion exercised after due consideration of the merits of the case and the likely effect on the ends of justice. The exercise of that discretion should be premised on conscientious and judicious decision



based on defined principles which were expounded by Ringera J in Global Tours & Travels Limited, Nairobi HC Winding Up Cause No. 43 of 2000:-

“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 a stay of proceedings and if it is so, 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.”

33. Similarly the threshold for stay of proceedings has been illuminated in the passages in Halsbury’s Law of England, 4<sup>th</sup> 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 proceedings beyond all reasonable doubt ought not to be allowed to continue.

This is a power which, it has been emphasized, 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 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.”

34. In that regard, for an order of stay of proceedings to issue the following points of consideration ought to be adhered to:-

- a. Whether the applicant has established that he has a prima facie arguable case;
- b. Whether the application was filed expeditiously; and
- c. Whether the applicant has established sufficient cause to the satisfaction of the court that it is in the interest of justice to grant the orders sought.

#### **Whether the applicant has established that she has a prima facie arguable case**

35. Cognizant of the fact that an arguable appeal needs only raise a single bona fide point worthy of consideration by the Judge who will hear the appeal and it need not be one that must necessarily succeed. Cooperative Bank of Kenya Ltd vs Banking Insurance of Finance Union (Kenya) [2015] eKLR.

36. From a cursory glance at the memorandum of appeal, the applicant’s main contention is the payment of Kshs. 150,000/- to the respondents as provision for their upkeep. The parties are yet to determine the free property of the deceased. I have also had the chance of perusing the Magistrate’s ruling that is appealed against and appreciated the court’s reasoning. The background facts in the Succession



- Cause pending before the magistrate is that the applicant herein was appointed the administrator of the deceased's estate. The respondents are the applicant's children with the deceased.
37. The applicant having been appointed administrator on 21<sup>st</sup> December 2022 has never moved the court for confirmation of the grant. It has not been denied that the applicant collects monthly rent of over Ksh.700,000 since the deceased died on 10<sup>th</sup> October 2021 and does not account for the rental income which is an issue of concern since her children have no sufficient income to maintain themselves. The applicant has delayed the confirmation of the grant which will be the ultimate solution to the disputes of the parties. As an administrator the applicant is obligated by the law to account for any income from the estate to other beneficiaries. It is noted that in the ruling of the Magistrate delivered on directions on accounting of the income has been given and that timelines for filing an application for confirmation of grant have been given. This is a step in the right direction to ensure the Succession cause is fast tracked.
  38. With that background I wish to address the requirements of granting orders stay of proceedings.
  39. The applicant states that one of her basis of objection for payment to each of the children of Ksh.50,000/= each cannot be implemented since the court did not state where such income will come from and that she cannot afford the total amount of Ksh.150,000 per month. The applicant is collecting rent of deceased properties which is quite substantial. I am not convinced that the applicant is unable to provide for her children pending confirmation of grant. The orders made by the magistrate are of temporary nature pending the confirmation of the grant. The applicant was given 60 days to file the necessary application for confirmation.
  40. If this court was to stay proceedings in the magistrate's court pending hearing and determination of this appeal, the Succession Cause will continue to delay while some beneficiaries are in financial hardship and while the respondent continues to neglect her fiduciary duty as an administrator to account for the income of the estate. I find that the applicant has failed to demonstrate a prima facie case.
  41. I have already addressed the issue of the source of the Ksh.150,000/= payable to the respondents on monthly basis as per the order of the Succession court. The deceased's estate has income which is sufficient to meet the said allocation. In the event that the applicant experiences difficulties in the payments, she is at liberty to approach the magistrate's court to give clarification as she also accounts for the income she has been collecting over the years as was directed to do.
  42. The applicant in my view has not shown sufficient cause.
  43. In an application of this nature, the court must also consider several other factors. Firstly, in the event that the orders sought are granted, whether there will be a grave and fundamental interruption of the rights of the beneficiaries to complete the Succession Cause and inherit their shares in the estate. In my considered view, it is in interests of all the beneficiaries to have the Succession Cause conducted but not to stay the proceedings another two or more years pending hearing of the appeal. The scarcity of judicial time must also be considered in that such time is scarce and must be utilized economically.
  44. I reach a conclusion, that the applicant has failed to satisfy the requirements of this application and as such, it must fail.
  45. I find no merit in the application dated 6<sup>th</sup> November 2025 and it is hereby dismissed.
  46. Each party to meet their own costs.
  47. It is hereby so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 24<sup>TH</sup> DAY OF APRIL 2025.**



**F. MUCHEMI**  
**JUDGE**

