



**In re Estate of Wangithi Mwaniki Gatumuta alias Anne Wangithi Gatumuta (Deceased)
(Succession Cause 563 of 2013) [2025] KEHC 6760 (KLR) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6760 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
SUCCESSION CAUSE 563 OF 2013**

EM MURIITHI, J

MAY 15, 2025

**IN THE MATTER OF ESTATE OF WANGITHI MWANIKI
GATUMUTA ALIAS ANNE WANGITHI GATUMUTA (DECEASED)**

BETWEEN

DOLLY WAWIRA MURIUKI & 5 OTHERS APPLICANT

AND

PETER KARIUKI MWANIKI RESPONDENT

AND

BENSON MURELTHI KINYUA APPLICANT

RULING

1. This is a Ruling on application by Summons dated 10/7/24 expressed to be brought “under Rules 49. 63 and 73 of the *Probate and Administration Rules*, Order 45 Rule 1 of the *Civil Procedure Rules*, Order 50 Rule 6 of the *Civil Procedure Rules* and all other enabling provisions of the law” for extension of order of status quo pending appeal as specifically prayed for in terms that:
 - “1. That the Honourable Court be pleased to review its orders given on 10th March, 2024 and issued on 22nd April, 2024.
 2. That the Honourable Court be pleased to extend the period granted for the status quo to be maintained.
 3. That the costs for this application be provided for.”



2. The facts relied on are set out in the Supporting Affidavit of the Applicant sworn on 10th July 2024 as follows:

“Supporting Affidavit

I, Benson Mureithi Kinyua, of P.O. Box 1213, Kerugoya in the Republic of Kenya, hereby consciously declare solemn oath and state as follows:

1. That I am the applicant herein and therefore competent to swear this affidavit.
 2. That the Court made orders on 19th March, 2024 granting status quo and suspending the execution of the grant for a period of 120 (one hundred and twenty) days unless otherwise directed by the Court of Appeal (Annexed is a copy of the Order given on 19th March, 2024 marked "BMK01"
 3. That being dissatisfied by the ruling of this court delivered on 23rd November, 2023 I filed an appeal before the Court of Appeal vide Nyeri Court of Appeal Civil Appeal No. E025 of 2024 which suit is still pending determination. (Annexed is a copy of the ruling delivered on 23rd November, 2023 marked "BNK02" and Memorandum of Appeal dated 16th February, 2024 marked "BMK03")
 4. That after this honourable court issued its orders of 19th March, 2024 and upon instructing my firm of advocates to expedite the hearing of the suit before the Court of Appeal, I was duly informed by my advocate which information I verily believe to be true that the Court of Appeal at Nyeri currently has no quorum of judges to sit and determine the suit.
 5. That no prejudice shall be occasioned to the Respondent and/or parties herein should this application be allowed but I stand [0 suffer great prejudice should the orders sought fail to be granted.
 6. That it is in the interest of justice that the orders sought be granted.
 7. That I swear [his affidavit in support of the application herein.
 8. That what is herein above deponed is true to the best of m)' knowledge, information and belief.”
3. The Petitioner Peter Kariuki (1st Administrator) did not oppose the application.
4. The Respondents filed a Replying Affidavit sworn on 23/7/2024 as follows:

“Replying Affidavit

I, Dolly Wawira Muriuiki of Post Office Box Number 32-10303, Kutus, Kirinyaga County within the Republic of Kenya do hereby make oath and state as follows:-

1. That I am a female adult of sound mind and a Co-Administrator herein thus competent enough to swear this affidavit.
2. That the Summons (General Form) dated 10th July. 2024 have been read and explained to me and wish to respond thereto as hereunder.



3. That the Summons lacks merit as there are no new issues to warrant this Honourable Court to review its orders issued on 22nd April, 2024.
4. That I have been advised by my Advocates on record which advise I verily believe to be true that there is no new evidence, fact, circumstances or material facts or error apparent on the record to warrant a review.
5. That the orders of the court issued on 10th March, 2024 were crystal clear that status quo was to be maintained in this matter and that no activity was to take place in respect of the grant herein. (Attached is the order marked 'DWM1').
6. That the Applicant was granted 120 days of stay of execution of the grant or any action in this matter and that any extension of orders for stay were to be applied before the Court of Appeal.
7. That at the time of filing the application for stay the Applicant in his Summon (General Form) dated 27th February, 2024 had filed an appeal Nyeri Civil Appeal E025 of 2024. (Attached is a copy marked "DWM2").
8. That there were no orders given on 19th March, 2024 capable to be reviewed by this Honourable Court.
9. That the Applicant has not demonstrated that he has been directed by the Court of Appeal to seek extension for stay before this Honourable Court in terms of the orders issued on 19/4/2024.
10. That it is clear that the Applicant has not made any application before the Court of Appeal either for maintenance of status quo stay of execution or otherwise.
11. That mere filing of the Appeal before the court of appeal does not bar the Applicant from filing an application for stay before the Court of Appeal.
12. That I have been advised by my Advocates, which advise I verily believe to be true that directions for the hearing of an appeal are given by the Deputy Registrar hence the issue of lack of quorum is indeed not a reason to bar the Applicant from seeking a stay.
13. That the application is an attempt to muscle the Honourable Court to review none existent orders hence the same ought to be dismissed with costs.”

5. Counsel for the parties then filed written submissions on their respective contentions.

Determination

6. In regular civil cases, Order 51 rule 10 of the [Civil Procedure Rules](#) provides that no technical objections should be taken to application as follows:

“[Order 51, rule 10.] Provision under which application is made to be stated.

10. Every order, rule or other statutory provision under or by virtue of which any application is made must ordinarily be stated, but no objection shall be made and no application shall be refused merely by reason of a failure to comply with this rule.



- (2) No application shall be defeated on a technicality or for want of form that does not affect the substance of the application.”
7. In the same spirit of doing substantial justice in a dispute, the *Probate and Administration Rules* provides under Rule 73, which is relied on by the Applicant, as follows:
- “73. Saving of inherent powers of court
- Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”
8. It would be a subversion of this principle of substantial justice to seek to defeat an application for citing the wrong provision of law or date of an order of court whose existence, in substance, is not contested.
9. It is clear from the Order of the Court attached to the affidavits in support of the application and in reply that the Order subject of this application was made on 19/3/2024 and subsequently extracted and issued on 22/4/2024.
10. In setting the outer limit of 120 days for the status quo order, the Court must have considered it possible that the Court of Appeal would have dealt with the appeal or otherwise given directions in the matter, either continuing the order for status quo or otherwise.
11. Indeed, by its directions on 5/12/2024 at the hearing of the application, the Court upon being informed of the passing on of the 2nd Administrator deponent of the Replying Affidavit herein directed a further stay for 45 days pending any actions (presumably for substitution of the deceased party) by the applicant or other party as follows:

“ 5/12/2024

Before Hon. R. Mwangi J.

C/A Murage

Kimata for 1-6 Respondents

Magee for Applicant Benson Mureithi

Omenya for Petitioner Peter Kariuki.

Mr. Magee: We filed submissions on our application dated 10 July 2024. However, we are informed that Administrator Dolly Lawira Muriuki has passed on so there will be no need to continue.

Ms. Kimata: It is true 1st respondent has passed on. There was a Co-Administrator Peter Kariuki and he is alive.

Mr. Omenya: We were informed that Dolly 1st Administrator passed. We had no issue with Magee’s application. We leave it to Court.

Mr. Magee: In the circumstances, once Peter Kariuki is supporting our case there is no opposition to our application.

Court:

The Court hereby defers ruling date for 45 days pending any actions by the applicant or other party.



Mention on 26/3/2025.”

12. The Court of Appeal has not had occasion to consider that because the matter has not been placed before the Court for hearing. The matter shall not come up for hearing now until the deceased party has been substituted in accordance with the rules of Court.
13. The question is whether the applicant has in some way defaulted to move an application in the Court of Appeal for purposes of having that Court consider and give directions orders in the matter.
14. The Order of this court made on 19/3/2024 and issued on 22/4/2024 was in precise terms as follows:
 - “ 1. That Status quo to be maintained in this matter.
 2. That there shall be no activity to be executed upon the grant in this matter for 120 (one hundred and twenty) days unless otherwise directed by the Court of Appeal.
 3. That mention on 30th July 2024.”
15. The order did not require the applicant to move the Court of Appeal, and he may not be faulted for his failure even it may appear to be the reasonable thing to do in the circumstances as the matter is now in the hands of the Court of Appeal following the filing of the Notice of Appeal herein, and Rule 5 (2) (b) of the *Court of Appeal Rules* being available upon filing of Notice of Appeal as with Order 42 Rule 6 (6) of the *Civil Procedure Rules* for the High Court.
16. To refuse it would occasion an injustice, as the event for which the Court (Mwongo, J.) granted stay, that is the reconsideration of the matter by the Court of Appeal has not occurred. It is for no fault of the applicant that the Court of Appeal has not dealt with the issue within the 120 days granted by the Court. There is sufficient reason to review the order of 19/3/2024 by extending the life of the order for status quo in the matter.
17. Further, in the event of the passing of the 2nd Administrator, there is by an act of God no possibility of the matter being dealt with by the Court of Appeal without the necessary delay in substitution of the party. This Court is minded to hold the status quo by extending the order of the Court issued on 19/3/2024 by a further period of 120 days.
18. For avoidance of doubt, there shall now be an express direction by the Court that the applicant must seek and obtain any further extension before the Court of Appeal now seized with the determination of the merits of the dispute.

Orders

19. Accordingly, for the reasons set out above, the application for extension of time of the stay order is granted.
20. In the circumstances of the case, where one party the 2nd Administrator is deceased, the Court shall extend the status quo order for further period of 120 days, with an express direction that any further extension of the Order for status quo must be obtained from the Court of Appeal in an application in that behalf, or determination of the Appeal otherwise.
21. Mention for hearing/directions as to hearing of application dated 25/3 2025 for appointment of a second Administrator on 4/6/2025.

Order Accordingly.



DATED AND DELIVERED THIS 15TH DAY OF MAY 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:-

Mr. Magee for the Interested Party/Applicant.

Ms. Kimata for the Respondent.

Mr. Omenya for 1st Administrator/Petitioner Peter Kariuki.

