



In re Estate of Nderitu Kanyi alias Moses Nderitu Kanyi (Deceased) (Succession Cause 242 of 1997) [2025] KEHC 5646 (KLR) (6 May 2025) (Ruling)

Neutral citation: [2025] KEHC 5646 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE 242 OF 1997
DKN MAGARE, J
MAY 6, 2025
FORMERLY SUCCESSION CAUSE NUMBER 40 OF 1992]
IN THE MATTER OF THE ESTATE OF NDERITU KANYI
ALIAS MOSES NDERITU KANYI (DECEASED)**

BETWEEN

JANET KABUI NDERITU APPLICANT

AND

CYRUS KABUI NDERITU 1ST RESPONDENT

RICHARD KANYI NDERITU 2ND RESPONDENT

ISAAC NDUNGU NDERITU 3RD RESPONDENT

RULING

1. The late Moses Nderitu Kanyi (deceased) died on 19. 10.1991. A grant was issued and confirmed on 29.09.1997. The Applicant/administrator seeks to enforce the said certificate of confirmation of the grant. The court had divided the assets equally among the three houses. When the enforcement application was filed, Cyrus Kabui Nderitu challenged the confirmation. Cyrus Kabui Nderitu filed a summons dated 16.02.2018 for revocation of the grant of letters of administration on the grounds inter alia that the proceedings to obtain the grant were defective in substance. the matter was heard.
2. On the 24th day of March 2025, this court found the application to be baseless and dismissed it with costs of 45,000/=. The application dated 27.12.2017 was then listed for hearing. The matter came up today. The Respondent appointed a new advocate and sought permission to file other documents. The advocate indicated that her client was not willing to sign documents. He had neither filed nor served any application for stay of execution.
3. The application sought the following orders:



- a. That this Honourable Court be pleased to authorize the Deputy Registrar to sign all the relevant documents necessary on behalf of the Respondents to enable the Applicant to be registered as owner of her portion namely title deed No Othaya/Thuti/66, title deed No Othaya/Thuti/395 and Plot No 8 Gatugi Market in order to give effect to the Certificate of Confirmation of the Grant issued herein on 23rd September, 1997.
 - b. That the Nyeri District Land Registrar be directed to dispense with the production of the title deed No Othaya/Thuti/66 and title deed No Othaya/Thuti/395 and the Respondent's passport size photographs, PIN Certificate, or their Identity Cards while registering the transfer.
 - c. That the costs of this application be provided for.
4. An application of this nature is usually a formal one. The only defence is that the applicant is willing to sign the documents. It is not enough to postulate that they intend to appeal from the ruling I made on 25.3.2025. The said ruling dismissed an application. Even if an application for stay is made, it will serve no purpose. in the case of *Mbugua v Njuguna & 2 others* (Environment and Land Appeal E024 of 2021) [2022] KEELC 3974 (KLR) (28 July 2022) (Ruling), YM Angima, J posited as doth:

The court is of the opinion that a dismissal order is not capable of being stayed under Order 42 rule 6 of the *Civil Procedure Rules*. It is a negative order which simply means that the parties were left in the same position they were in before the filing of the application. See *Western College of Arts and Applied Sciences v Oranga & others* [1976-80] KLR 78. The court is thus of the opinion that there is nothing to be stayed in the dismissal order made on November 4, 2021 hence the court is not inclined to grant any stay.

5. In the *Registered Trustees, Kenya Railways Staff Retirement Benefits Scheme v Millimo, Muthomi & Co. Advocates & 2 others* [2022] KECA 491 (KLR), the court of appeal [W Karanja, MSA Makhandia & KI Laibuta, JJA] stated as follows:

17. We start by acknowledging the fact that the ruling appealed against was a compounded one dealing with 2 applications, which yielded two different results. The first application, which was made by the applicant, was dismissed. As submitted by learned counsel for the 1st respondent, the position taken by this Court in respect of applications for stay of execution in respect of negative orders is clear. Negative orders cannot be stayed. We reiterate the sentiments of the predecessor of this Court in its decision in *Western College of Arts and Applied Sciences v Oranga & others* (1976-80) 1 KLR, where the Court stated in respect of stay of execution as follows: "But what is there to be executed under the judgment, the subject of the intended appeal" The High Court has merely dismissed the suit with costs. Any execution can only be in respect of costs. In *Wilson v Church*, the High Court had ordered the trustees of a church to make a payment out of that fund. In the instant case, the High Court has not ordered any parties to do anything, or to refrain from doing anything, or to pay any sum. There is nothing arising out of the High Court Judgment for this Court, in and application for stay, it is so ordered." Further, in the more recent case of *Kenya Commercial Bank Limited v Tamarind Meadows Limited & 7 others* [2016] eKLR, the Court of Appeal expounded on stay of execution stating:



18. In *Kanwal Sarjit Singh Dhiman v Keshavji Juvraj Shah* [2008] eKLR, the Court of Appeal, while dealing with a similar application for stay of a negative order, held as follows: “The 2nd prayer in the application is for stay (of execution) of the order of the superior court made on 18th December, 2006. The order of 18th December, 2006 merely dismissed the application for setting aside the judgment with costs. By the order, the superior court did not order any of the parties to do anything or refrain from doing anything or to pay any sum. It was thus, a negative order which is incapable of execution save in respect of costs only (see *Western College of Arts & Applied Sciences v Oranga & others* [1976] KLR 63 at page 66 paragraph C).”
6. The orders dismissing the applicant’s application to review, set aside or otherwise vary its earlier conditions extending time within which to file a reference against the Bill of costs cannot be stayed...
7. Of importance, what is sought to be executed is the ruling of 23.09.2017. There is no appeal against that decision. The application to revoke that grant was dismissed. Consequently, nothing is stopping the execution of the certificate of confirmation of grant.
8. Consequently, the application dated is allowed in part.

Determination

9. In the circumstances, the application dated 27.12.2017 is allowed in the following terms:
 - a. The Deputy Registrar is hereby authorised to sign all the relevant documents and forms necessary on behalf of the Respondents to enable the transmission of Land Parcel No Othaya/Thuti/66, Land Parcel No Othaya/Thuti/395 and Plot No 8 Gatugi Market to give effect to the Certificate of Confirmation of the Grant issued herein on 23.09.1997.
 - b. The Land Registrar shall dispense with the production of the title deeds over Land Parcel No Othaya/Thuti/66, Land Parcel No Othaya/Thuti/395 as per the schedule and the Respondents’ passport size photographs, PIN Certificate, or their Identity Cards while registering the transfer.
 - c. Each party to bear its costs.
 - d. The file is closed.
 - e. Transmission concluded by 6.11.2025
 - f. The person in possession of the title deeds must surrender them to the court within 7 days, otherwise the land registrar should dispense with their production.
 - g. The OCS Othaya police station to provide security.

DELIVERED, DATED, AND SIGNED AT NAIROBI ON THIS 6TH DAY OF MAY 2025.

Ruling delivered ex tempore through Microsoft Teams Online Platform.

KIZITO MAGARE

JUDGE

Represented by: -

Mrs Magua for the Applicant



Ms Wangechi for the Respondent
Court Assistants –Michael/Munguti

