



REPUBLIC OF KENYA



**In re James Boro Karugu (Deceased) (Succession Cause E916 of 2023)  
[2025] KEHC 5483 (KLR) (Family) (2 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5483 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**

**SUCCESSION CAUSE E916 OF 2023**

**PM NYAUNDI, J**

**MAY 2, 2025**

**IN THE MATTER OF JAMES BORO KARUGU ( DECEASED)**

**BETWEEN**

**VICTORIA NYAMBURA KARUGU ..... APPLICANT**

**AND**

**PETER MBUTHIA GACHUHI ..... 1<sup>ST</sup> RESPONDENT**

**JOSHUA MWAURA KIMANI ..... 2<sup>ND</sup> RESPONDENT**

**ELIUD KARUGU GATAMBIA ..... 3<sup>RD</sup> RESPONDENT**

**JANE KABIU GITAU ..... 4<sup>TH</sup> RESPONDENT**

**ERIC MWAURA KARUGU ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

1. Vide Notice of Motion application dated 1<sup>st</sup> November 2024, the Applicant seeks the following orders;
  - a. Spent
  - b. Spent
  - c. That this Honourable Court be pleased to grant stay of proceedings pending the hearing and determination of the Applicant's intended appeal in the Court of Appeal against the Ruling of Hon. Lady Justice Patricia Mande Nyaundi dated 18<sup>th</sup> October 2024.
  - d. That the costs of this application do abide the results of the intended appeal.



2. The Application is based on the grounds on the face of the application and supported by the affidavit of the Applicant, Victoria Nyambura Karugu sworn on 1<sup>st</sup> November 2024. The Applicant avers that she intends to appeal against the ruling of this Court delivered on the 18<sup>th</sup> October 2024, in which the Court declined to recuse itself from the matter.
3. It is contended that the Court in arriving at its decision failed to give due consideration to the applicant's 'voluminous' application. In particular the Applicant is aggrieved that the Court failed to consider and make a determination on the continued role of the Deputy Registrar Hon. Catherine Nganga in handling the matter. That the Court has not acted on the failure by the respondents to make available the original will and that the bias of the Court is demonstrated in the short time it gave to the Applicant to make submissions.
4. It is submitted therefore, that the Court having failed to fully consider the application of 9<sup>th</sup> August 2024 arrived at an erroneous decision. The Applicant's prayer before the Court is for stay of proceedings and it is argued that unless the stay of proceedings is granted, the succession cause is likely to proceed substantively before this Court with the Hon. Catherine Nganga handling the matter administratively to the great prejudice to the applicant and rendering her intended appeal an academic exercise.
5. Further it is submitted that since this Court has not commenced the hearing of the Cause in any aspect, the matter can be reassigned to any of the other Judges in the division and likewise any other registrar other than the Hon. Catherine Nganga can handle the file administratively.
6. It is averred that the grant of the orders of stay of proceedings will facilitate justice and shall not in any way prejudice the respondents who are currently enjoying the orders of status quo.
7. Adam Chege and Allan Joe Mwaura, beneficiaries of the Estate oppose the Application and have filed grounds of opposition dated 15<sup>th</sup> November 2024. They state that the application offends the mandatory provisions of the *Law of Succession Act*; Further that the Applicant has not demonstrated the substantial loss she stands to suffer if the matter proceeds to hearing; It is also stated that the applicant has not demonstrated that she has an arguable appeal with high chances of success. The fourth ground is that the intended Appeal is a calculated delaying tactic by the Applicant which goes against the timely, cost- effective and proportionate dissolution of disputes in order to ensure access to justice by parties as provided for under the law. The final ground is that the estate remains unadministered and continues to waste away.
8. Adam Chege has in addition filed a replying affidavit sworn on 5<sup>th</sup> December 2024, in which he reiterates the matters raised in the Grounds of Opposition as set out in paragraph 7 above.
9. The respondents have also filed Grounds of Opposition dated 14<sup>th</sup> November 2024. It is stated that the Applicant has not demonstrated the loss she will suffer if the stay of proceedings is not granted. It is submitted that to avoid the Estate being wasted the Court should give a stay that is conditional on the issuance of a grant of probate. It is stated further that the application is a delay tactic that is aimed at delayed access by the beneficiaries to their share of the estate and urges that whether or not the appeal is arguable is not relevant to the application.
10. The 6<sup>th</sup> Respondent, Eric Mwaura Karugu has sworn an affidavit in opposition on 28<sup>th</sup> February 2025. The gist of the averments is that the current application adds to a growing list of actions by the applicant to delay the finalisation of the administration of the estate. He therefore seeks that the application be dismissed.



11. Wambui Mwangi, a beneficiary of the estate has sworn affidavit in opposition on 17<sup>th</sup> January 2025. She avers that the application is frivolous, vexatious and an abuse of court process. On the proceedings of 25<sup>th</sup> September 2024, she avers that the Court directed on 24<sup>th</sup> September 2024 that the application be heard at 8am. The Counsel for the applicant was late on that day and therefore had to truncate his submissions. She urges that the Applicant is keen on delaying the matter and that therefore the application ought to be dismissed.
12. Pursuant to directions of the Court the Application was canvassed via written submissions.

### **Summary of the Applicant's Submissions**

13. The Applicant's submissions are dated 24<sup>th</sup> February 2025 and it is submitted that the Application turns on 2 issues;
  - a. That the application is brought without delay, and;
  - b. That there is sufficient cause to order stay, that is, that substantial loss would ensue from a refusal to grant stay.
14. Reference is made to the decision in *Global Tours & Travels Limited*, Nairobi HCC Winding Up Cause No. 43 of 2000 on the principles to guide a Court in determining whether or not to grant a stay of proceedings. It is submitted that the Application was submitted without delay and that the applicant will suffer substantial loss and reliance is placed on the decision in *Imperial Bank Limited (In receivership) & 2 Others v Alnaship Popat & 17 Others* [2017] eKLR and *James Wangalwa & Anor v Agnes Naliaka Cheseto* [2012] eKLR on the submission that failure to issue the stay will create a state of affairs that will irreparably affect or negate the core of the applicant.
15. In addition it is submitted that unless the stay is granted the appeal will be rendered nugatory and reference made to the decision in *Butt v Rent Restriction Tribunal* [1979] eKLR. It is submitted that the scales tip in favour of the applicant herein, as the loss to be suffered by her if the proceedings are not stayed pending appeal is substantial and outweighs any inconvenience that the Respondents may suffer. Finally reference made to the decision in *Haroon & Another v Hassan* (Succession Cause No. E501 of 2022) [2023] KEHC 27186(KLR) in which the Court granted Stay of proceedings pending appeal where the impugned ruling concerned the disqualification of a counsel for conflict of interest.

### **Summary Of Submissions Of Wambui Mwangi, Beneficiary**

16. In her submissions dated 2<sup>nd</sup> April 2025, she submits that the only issue for determination is whether the Applicant has met the threshold for issuance of stay of proceedings and cites the decision in *Christopher Ndolo Mutuku & Another v CFC Stanbic Bank Limited* [2015] KEHC (KLR) on the legal considerations when a court is determining an application for stay of proceedings. It is her Submissions that the balance of scales tilt in favour of the dismissal of the application.
17. Relying on the same decision it is submitted that the right of the applicant to appeal must be balanced against the right of the respondents to have the case determined without unreasonable delay pursuant to Article 159 of the *Constitution*.
18. She further relies on the decision in *Leah Nyawira Njega (Deceased)* [2021] eKLR for the assertion that the Court should exercise its power to stay proceedings sparingly and in exceptional cases and that if dissatisfied with the decision of the Court, the Applicant can always appeal.



## Summary of Submissions of Adam Chege And Allan Joe Mwaura, Beneficiaries

19. In submissions dated 7<sup>th</sup> April 2025 it is submitted the Applicant has not met the threshold for the grant of the order of stay of proceedings as required under Order 42 Rule 6(1) of the [Civil procedure Rules](#). It is further submitted that the Applicant has not demonstrated the prejudice she will suffer.
20. Reference is made to the decision in [Kenya Wildlife Service v James Mutembei](#) [2019] eKLR for the assertion that the conditions for grant of stay of proceedings are more stringent than those for stay of execution.
21. Reliance is also made to the decision in [Access Bank Kenya PLC v Mengich & Anor](#) ( Civil Appeal E003 of 2024) [2024] KEHC 5682(KLR) (22 May 2024) ( Ruling) and [Ndabi v Kimotho & Anor](#) ( Civil Appeal 16 of 2023) [2023] KEHC 17717 ( KLR) (19<sup>TH</sup> May 2023) (Ruling) for the assertion that the overriding objective principle does not favour the grant of the stay. It is also submitted that the bias test has not been met herein and reference made to the decision in [Gachuri v Attorney General & Another; Kenya Judges Welfare Association & Another](#) ( Interested Parties) ( Consitutional Petition E034 of 2023) [2024] KEHC 1362 ( KLR) (Constitutional and Human Rights) ( 23 February 2024) ( Ruling)

## Analysis And Determination

22. Having considered the pleadings herein and the submissions filed alongside the authorities cited and the relevant law, I frame the following as the issues for determination-
  - a. Whether the Court should grant stay of proceedings herein pending the determination of the intended appeal?
  - b. Who should pay costs?
23. The law on the principles to guide a court in considering an application of stay of proceedings pending appeal is well established and set out under Order 42 Rule 6 of the [Civil procedure Rules](#) as hereunder
  - (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
  - (2) 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.
  - (3) Notwithstanding anything contained in subrule (2), the court shall have power, without formal application made, to order upon such terms as it may deem fit a stay of execution pending the hearing of a formal application.



- (4) For the purposes of this rule an appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of that Court notice of appeal has been given.
  - (5) An application for stay of execution may be made informally immediately following the delivery of judgment or ruling.
  - (6) Notwithstanding anything contained in subrule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.
24. There is a plethora of court decisions on the interpretation of this provision and it is therefore settled that in exercising its discretion on whether or not to grant stay of proceedings the Court, as was stated in the decision of *William Odhiambo Ramogi & 2 Others Vs. The Honourable Attorney General & 3 Others* [2019] eKLR, will consider the following- six principles:
- a. First, there must be an appeal pending before the higher Court;
  - b. Second, where such stay is sought in the Court hearing the case as opposed to the higher Court to which the Appeal has been filed and there is no express provision of the law allowing for such an Application, the Applicant should explain why the stay has not been sought in the higher Court. This is because, due to the potential of an Application for stay of proceedings to inordinately delay trial, there is a policy in favour of Applications for stay being handled in the Court to which an appeal is preferred because such a Court is familiar with its docket and is therefore in a position to calibrate any order it gives accordingly;
  - c. Third, the Applicant must demonstrate that the appeal raises substantial questions to be determined or is otherwise arguable;
  - d. Fourth, the Applicant must demonstrate that the Appeal would be rendered nugatory if the stay of proceedings is not granted;
  - e. Fifth, the Applicant must demonstrate that there are exceptional circumstances which make the stay of proceedings warranted as opposed to having the case concluded and all arising grievances taken up on a single appeal; and
  - f. Sixth, the Applicant must demonstrate that the Application for stay was filed expeditiously and without delay.
25. Having regard to these principles, I observe that the application was filed expeditiously and further that the applicant has demonstrated that she has an arguable appeal. The issue therefore on which this application will turn is whether the the denial of the orders sought, will render the intended appeal nugatory and occasion substantial loss to the Applicant.
26. In arriving at my decision, I am guided further by the decisions in *Mbiti & Another v Thome & Another* (Civil Appeal E010 of 2024) [2024] KEHC 5441 (KLR) (20 May 2024) (Ruling) which reiterated the decision in *Kenya Wildlife Service v James Mutembei* [2019] eKLR, to the effect that the conditions for grant of stay of proceedings will be more stringent than that of stay of execution.
27. The Courts in the above decisions were guided by the guidelines set out in *Halsbury's Law of England*, 4<sup>th</sup> Edition, Vol. 37 page 330 and 332 state-
- 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.

28. On whether the applicant has demonstrated that the loss she is likely to suffer is likely to be irreversible and therefore the Court must stay proceedings herein. She states at paragraph 10 of her submissions-  
The likelihood that substantial loss may result in the current circumstances is real, and not mere apprehension or speculation. In the absence of a stay of proceedings, the succession cause shall proceed with the Hon. Lady Justice Patricia Nyaundi SC., presiding over the same, and Hon. Catherine Nganga continuing to administratively deal with the matter, rendering the intended appeal, an academic exercise.
29. As stated in the impugned ruling, I limited the scope of the ruling as to whether or not I should recuse myself. The issue raised against me is that on account of bias I failed to move expeditiously to hear the matter. It was my direction that it was only after, I had determined whether or not I would be proceeding in the matter that the other issues raised in the application of 9<sup>th</sup> April 2024 would be heard either by me or if I had recused myself by another Judge.
30. In *Transpares Kenya Limited v Kibiego & another (Suing as the Legal Representatives of the Estate of Julius Kipkering)* [2025] KEHC 4436 (KLR) the Court stated that ultimately the Court must be guided by the overriding objective as set out in Section 1A of the *Civil Procedure Act*, which provides-
- 1A. Objective of Act
- (1) The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.
  - (2) The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).
  - (3) A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court.  
( Emphasis Supplied)
31. Having regard to the foregoing provision, I take the view that the right of the applicant to pursue her appeal must be balanced against the rights of the respondents and other beneficiaries to have the issue of the administration of the estate determined at the earliest opportunity. Do the circumstances of the instant case demand that I halt a constitutional obligation to hear matters that are placed within my docket? I don't think so.
32. I am invited to stop the proceedings herein as the Applicant pursues the appeal. The situation obtaining currently is that no Administrator has been appointed to the Estate. Further there are beneficiaries who are keen to have their right if any, to a share of the Estate be determined. This state of affairs will prevail for the period that the Applicant pursues her appeal. I am not persuaded that this can be in the



interest of justice to hold the estate in abeyance for an indeterminate period pending the determination of the appeal.

33. For this reasons, I will proceed to dismiss the application. Costs of this application will be in the cause.
34. Before I place my pen down, I wish to respond to the Applicants contention that when the matter came up for oral submissions, I am twisted her counsel to truncate his submissions. This is not factually correct. On the 24<sup>th</sup> September 2024, I directed that the Application be heard on 25<sup>th</sup> September 2024 at 8am so as to accommodate my cause list for the 25<sup>th</sup> September 2024.
35. The record will show that on that day notwithstanding that I was in Court by 8am, her counsel did not arrive in Court until 8:14 am and was reluctant to prosecute the application until she appeared in Court a few minutes later. I do not want to imagine that the Applicant is of the view that the Court should have accommodated the delay by herself and her counsel in getting to Court so as to delay the other proceedings slated for that day.
36. I am prepared to assume that having arrived late she was not aware and for some reason her counsel did not advise that he had in fact explained to the Court that he was late, having been caught up in traffic at the Pan Afric Hotel on his way to Court. I hope that the Applicant will find that clarification useful in understanding why it was I insisted on her Counsel proceeding within the available time.
37. In light of my ruling and having found that my ruling only dispensed with prayer 2 of the Application dated 9<sup>th</sup> August 2024, I will now proceed to give directions on the hearing of the pending limbs of that Application.

**SIGNED, DATED AND DELIVERED VIRTUALLY IN NAIROBI ON 2<sup>nd</sup> DAY OF MAY, 2025.**

**P M NYAUNDI**

**HIGH COURT JUDGE**

In the presence of:

Court Assistant Fardosa

Musyoka holding brief for Munge for Respondent

Mrs. Wambugu Allan and Adam Choge (Beneficiaires)

Ms. Mandogo holding brief for Mr. Kimathi & Mr. Murgor for Applicant Objectors

Ms. Mwadumbo – Wambui Mwangi a beneficiary

