



**In re Estate of Gorsho Roble Mohamed (Deceased) (Succession Cause
6 of 2023) [2025] KEHC 8560 (KLR) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8560 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 6 OF 2023
PN GICHOHI, J
JUNE 19, 2025**

IN THE MATTER OF THE ESTATE OF GORSHO ROBLE MOHAMED (DECEASED)

BETWEEN

JEREMIAH MBAYA APPLICANT

AND

RASHID MAHMOUD FARAH RESPONDENT

RULING

1. This Ruling is in respect of the Applicant's Notice of Motion dated 30th May, 2025 and brought pursuant to Rule 1(2), 5 (2) (b) and 9 of the Court of Appeal Rules, 2022 seeking for Orders:-
 1. That this application be certified urgent and heard expeditiously.
 2. That this Honourable Court be pleased to stay execution of the entire ruling delivered on the 26th March, 2025 pending the inter-partes hearing of this application.
 3. That this Honourable Court be pleased to stay execution of the entire ruling delivered on the 26th March, 2025 pending hearing and determination of this appeal.
 4. That this Honourable Court be pleased to make and further orders as it may deem just and reasonable.
 5. That costs of this application be provided for
2. The grounds are on the face of the application and supported by the Affidavit of the Applicant sworn on even date. He states that he is aggrieved by the ruling delivered by this Court on 26th March, 2025, and has lodged a Notice of Appeal.



3. He claims to be the bonafide owner of land L.R 2511/1 (L.R. 1317/12/11 Gilgil Township), which has commercial premises and that the Business Premises and Rent Tribunal had previously ordered rent to be deposited into the Tribunal's account.
4. He states that the ruling of 26th March, 2025, affirmed the Respondent as an Administrator and directed him to file for Summons for Confirmation. Additionally, the ruling ordered the Applicant to pay Kshs. 30,000/- in rent for the commercial premises he occupies, with failure to pay resulting in vacating the premises, despite the applicant's claim of ownership.
5. The applicant is apprehensive that the respondent will proceed to file for confirmation of grant and dispose of the property, to the Applicant's detriment. Further that the Respondent has also filed an application to have monies held at the Business Premises and Rent Tribunal released to him and to collect future rent.
6. The applicant argues that if a stay of execution is not granted, he will suffer substantial loss, and his appeal will be rendered nugatory. He further states that he will suffer irreparable damage and is willing to abide by any conditions set by the court. He believes that the Respondent will not suffer prejudice if the application is allowed.
7. He further states that the appeal is arguable with overwhelming chances of success and therefore, it is in the interest of justice that he be afforded an opportunity to appeal.
8. It is his position that the application was brought in a timely manner and with utmost good faith. Finally, that this Court has jurisdiction to grant the prayers.
9. In the Affidavit, the Applicant stated that leave to Appeal was earlier granted by this Court without any opposition by the Respondent.
10. The Respondent's Advocates were served with this Application as evidenced by the Affidavit of service sworn on 17th June, 2025 by Francis Mwangi Njuguna, Advocate for the Applicant but no response was filed.
11. When the application came for directions yesterday, Counsel for the Applicant maintained that the matter was very urgent in that the Respondent's application before the Tribunal seeking release of the money deposited there is coming for hearing today the 19th June 2025. He argued that the Appeal will be rendered nugatory if the stay of execution of this Court's Ruling of 26th March 2025 is not granted pending hearing and determination of appeal in the Court of Appeal. He relied entirely on the contents of Notice of Motion dated 30th May, 2025.

Analysis and determination

12. As noted above, the Application herein is filed pursuant to Rule 1(2), 5(2)(b) and 9 of the Court of Appeal Rules.
13. For emphasis, Rule 1(2) provides:-
 - “(2) These Rules shall not limit or otherwise affect the inherent power of the Court to make any orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.”



14. Rule 5(2)(b) states;-

“Subject to sub rule (1), the institution of an appeal shall not operate to suspend any sentence or to stay execution, but the Court may; (b)in any civil proceedings where a notice of appeal has been lodged in accordance with rule 77, order a stay of execution, an injunction or a stay of any further proceedings on such terms as the Court may think just.”

15. While Rule 9 provides that;-

“ Each application to the Court, other than an application made informally during the course of a hearing, shall, whether lodged before or after the institution of an appeal, be given a serial number.(2)For the purposes of sub rule (1), there shall be maintained in the Registry and in each sub-registry two series of numbers for each calendar year, one for criminal and one for civil applications, and the serial numbers shall be prefixed by letters indicative of the Registry or sub-registry.(3)Each criminal appeal shall be given a serial number in the Registry, which number shall be allotted within fourteen days after receipt of the notice of appeal, and for this purpose a series of numbers shall be maintained for each calendar year. (4)Each civil appeal shall be given a serial number in the Registry, which number shall be allotted immediately after the memorandum of appeal is received, and for this purpose a series of numbers shall be maintained for each calendar year.”

16. The Applicant has solely relied on the Court of Appeal Rules in seeking for Orders of stay before this Court. The High Court derives its power to grant a stay of execution pending appeal from its own decisions under Order 42 Rule 6 of the Civil Procedure Rules, 2010. Rule 5(2)(b) of the Court of Appeal Rules is the provision that grants the Court of Appeal the power to issue stay of execution.

17. In urging this Court to invoke Rule 5(2)(b) of the Court of Appeal Rules, the Applicant is essentially asking the High Court to apply rules that are exclusively vested in the Court of Appeal vide its own Rules. This is a matter of fundamental procedural competence and jurisdiction.

18. As regards the provisions under which a Court should have been moved, the Supreme Court in the case of *Njihia v Kimani & another* [2015] KESC 19 (KLR) had this to say:-

“ We have found still another impropriety. The Notice of Motion has been brought under Sections 3A and 3B of the *Appellate Jurisdiction Act* (Cap 9, Laws of Kenya), and Rules 39, 42 and 43 of the Court of Appeal Rules, 2010. These are not the right provisions of law under which the applicant should move the Supreme Court, where a review of denial of certification is sought.”

19. The Supreme Court then went on to reiterate its decision in *Hermanus Phillipus Steyn v. Giovanni Gnechi Ruscone*, Application 2 of 2012 that: “ It is trite law that a Court of law has to be moved under the correct provisions of the law.”

20. The Apex Court therefore held that;-

“ Hence, without thus identifying the proper legal framework for the motion, an application is liable to be struck out. We are, indeed, cognizant of the fact that the applicant drew the application documents himself, and has personally conducted this matter. Objections to the recourse to improper legal provisions did not come from the other parties. However, the extraordinary standing of this Court would demand that, in principle, litigants be clear as to the terms of the jurisdiction they are invoking. The litigant should invoke the correct



constitutional or statutory provision; and an omission in this regard is not a mere procedural technicality, to be cured under Article 159 of the *Constitution*.”

21. In the circumstances, the Applicant herein has not properly moved this Court. Further, even if it had moved this Court under Order 42 of the Civil Procedure Rules, and going by material before this Court leading to the impugned ruling, the Applicant has not demonstrated the substantial loss he would suffer in this matter. Further, there is no material to support his argument that the appeal before the Court of Appeal will be rendered nugatory if the orders sought herein are not granted.
22. In the upshot, the Application is disallowed with no order to costs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 19TH DAY OF JUNE, 2025.

PATRICIA GICHOHI

JUDGE

In the presence of :-

Ms. Wanjiru h/b Mr. Mwangi for Applicant (Jeremiah Mbaya)

Ms. Kasmani for Respondent (Rashid Mahmoud Farah)

Ruto, Court Assistant

