



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Margaret Wambui Kariuki (deceased) (Succession Cause  
130 of 2017) [2025] KEHC 10705 (KLR) (18 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10705 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
SUCCESSION CAUSE 130 OF 2017**

**A MSHILA, J**

**JULY 18, 2025**

**BETWEEN**

**DAVID NJOROGI KARANJA ..... APPLICANT**

**AND**

**NAOMI NYAMWATHI KARIUKI ..... RESPONDENT**

**RULING**

1. Before court is the Chamber Summons dated 6<sup>th</sup> March, 2024 and brought under Sections 3A, 75, 78, 79G of the [Civil Procedure Act](#) and Order 42 rule 6 of the [Civil Procedure Rules](#). The Applicant sought for the following orders:-
  - a. Spent
  - b. That a stay of execution and or further proceedings in Kiambu High Court Succession Cause No. 130 of 2017 be granted pending determination of the Appeal at the Court of Appeal in Nairobi Civil Appeal No.E598 of 2022.
2. The application is premised on the grounds that the Applicant took timely steps to be substituted after the Appellant's death and has acted without delay, and that the appeal risks being rendered nugatory due to earlier delays in obtaining court documents, yet no prejudice will be occasioned to the Respondent if stay is granted.
3. The Application is supported by the affidavit of David Njoroge Karanja, the Applicant herein, dated 06/03/2024. He seeks a stay of execution and or further proceedings in Succession Cause No. 130 of 2017 pending the hearing of Nairobi Civil Appeal No.E598 of 2022. He averred that the judgment being challenged was delivered on 3<sup>rd</sup> March 2022, and a Notice of Appeal filed the next day. Although the Appellant requested proceedings promptly, they were delayed and only received months later, as confirmed by a Certificate of Delay. The Appellant died on 29<sup>th</sup> August 2022 before filing the actual appeal. He stated that the Applicant moved to substitute her and was allowed on 29<sup>th</sup> November 2023.



He avers that he acted without delay. That a stay of execution is necessary to preserve the appeal, which may otherwise be rendered useless, and no prejudice will be suffered by the Respondent.

4. The Respondent filed her grounds of opposition in response to the applicant's application.
5. Subsequently parties were directed to canvass the application by filing written submissions.

### **Applicant's Submissions**

6. The Applicant admits that this Application was indeed filed past the prescribed period of 30 days because he was not issued with the required typed copies of proceeding and ruling. The said copies were availed to him on 8<sup>th</sup> July, 2022 whereas the Certificate of Delay was issued on 28<sup>th</sup> July, 2022. And as such this Application was made without unreasonable delay. He submits that if the stay of execution is not granted, his Appeal at the Court of Appeal will be rendered nugatory because the Respondent may proceed with the execution of the decree consequently causing him to suffer substantial loss. Reliance was placed on the case of *James Wangalwa & Another v Agnes Naliaka Cheseto* (2012) eKLR and the case of *Century Oil Trading Company Ltd v. Kenya Shell Limited Nairobi (Milimani) HCMCA No. 1561 of 2007*. The Applicant submits that he has a strong and an arguable appeal as spelt out in his intended Memorandum of Appeal. He submits that the Applicant should not be denied their opportunity to ventilate their legal cases in the Appeal process while allowing the Respondent to enjoy the fruits of her judgment. Reliance was placed on the case of *RWW v EKW* (2019) eKLR. Lastly, the balance was said to tilt in favor of the Applicant as he has a high risk of losing his right to the estate of the deceased.

### **Respondent's Submissions**

7. The Respondent submits that this application is baseless as there is nothing to stay, given that the grant was already revoked and no active orders exist requiring suspension. The revocation restored the matter to its original legal position. She claims that the Appellant fraudulently filed a second succession cause in Nairobi while the original matter was pending, and the revoked grant arose from that illegality. She contended that granting a stay of execution would cause irreparable harm to the Respondent as the Applicant may use the fraudulent title to transfer, dispose of, or secure credit, undermining the court process. Lastly, she submits that the appeal has no merit and stands no chance of success.

### **Issues For Determination**

8. Having considered the Applicant's application and the parties' submissions, the main issue for determination is whether the orders sought should be granted.

### **Analysis**

9. The principles for granting stay of execution are provided for under Order 42 Rule 6 (1) of the *Civil Procedure Rules* as follows:

“No appeal or a 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 an application being made, to consider such application and to make such orders thereon as may to it seem just, 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 the orders set aside.”

Order 42, rule 6 states:

“No order for stay of execution shall be made under sub-rule (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.”
10. The Applicant needs to demonstrate to the Court that he has satisfied the following conditions before he can be granted the order for stay of execution:-
- a. Substantial loss may result to the applicant unless the order is made.
  - b. The application has been made without unreasonable delay, and,
  - c. Such security as the Court orders for the due performance of the decree or order as may ultimately be binding on the applicant has been given by the Applicant.
11. The Applicant submits that the delay in filing the appeal was occasioned by failure to be issued with the typed proceedings and the ruling as the copies were availed on 8/7/2022 and the Certificate of Delay was issued on 28/7/2022. He contended that if the order for stay is not granted his appeal will be rendered nugatory and he will suffer substantial loss. He further contends that his appeal is arguable as such should be allowed to ventilate his issues in the appeal court.
12. On her part, the Respondent contends that there is nothing to stay as the grant has already been revoked. The matter has now been restored to its original legal position. The Respondent submits that the Applicant may deal with the title illegally as such cause harm to the Respondent. In any case it was submitted that the appeal has no chances of success.
13. The judgment of the court delivered on 3/3/2022 revoked the grant as such the matter was restored back to its original legal position. The grant having been revoked every asset or property of the deceased reverts back to her estate.
14. At this point there is nothing to execute or distribute or transmit, therefore there is nothing to stay. However, there is need to preserve the estate of the deceased from waste pending appointment of an administrator and to ensure proper distribution in accordance within the law. Refer to the case of *In Re Estate of Grace Chepkorir Koros (Deceased)* (2010) eKLR.

### **Findings And Determination**

15. For the forgoing reasons this Court makes the following findings and determinations:-
- i. The application is found to be devoid of merit and it is hereby dismissed.
  - ii. The whole estate of the deceased be preserved pending the issuance of a Grant of Letters of Administration.
  - iii. Each party to bear their own costs of this application.
  - iv. Mention on 2/12/2025. Mention notice to issue.



Orders Accordingly

**DATED SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 18<sup>TH</sup> DAY OF JULY, 2025**

**A.MSHILA**

**JUDGE**

In the presence of;

Sanja – Court Assistant

Maina h/b for Mbigi for the Applicant

N/A For the Respondent

