



**Mwathi v Karani (Succession Appeal E014 of 2024)
[2025] KEHC 10101 (KLR) (11 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10101 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION APPEAL E014 OF 2024**

**MA ODERO, J
JULY 11, 2025**

BETWEEN

GRACE GATHONI MWATHI APPELLANT

AND

ELIZABETH WANGU KARANI RESPONDENT

RULING

1. Before this Court is the Summons dated 5th November 2024 by which the Appellant/Applicant Grace Gathoni Mwathi seeks the following orders:-
 - “1. Spent
 2. That this Honourable Court be pleased to issue an order for stay against the collection of rent by the Respondent from LR no 6845/1202, pending the hearing and determination of the Appeal herein.
 3. That the Honourable Court do issue an order that the Rental income from the land known as LR no 6845/1202 be collected and deposited in a bank account in the names of both parties pending the hearing and determination of the Appeal.
 4. That in the alternative, this Honourable Court be pleased to grant stay of execution of the confirmed Grant of Letters of Administration dated 27th November 2018, *vide* the judgment delivered on 28th June 2024, pending the hearing and determination of the Appeal herein.
 5. That costs of this Application be provided for.”



2. The application was premised upon Section 76 of the *Law of Succession Act*, Sections 1A, 1B and 3A of the *Civil Procedure Act*, Chapter 21, Laws of Kenya, Orders 42 Rules 6 and 51 Rule 1 of the *Civil Procedure Rules 2010* and all other enabling provisions of law and was supported by the Affidavit of even date and the further Affidavit dated 17th December 2024 both sworn by the Applicant.
3. The Respondent Elizabeth Wangu Karani opposed the application through her Replying Affidavit dated 19th November 2024. The matter was canvassed by way of written submissions. The Applicant filed the written submissions dated 25th February 2025 whilst the Respondent filed the written submissions dated 16th April 2025.

Background

4. This matter relates to the estate of the late John Kiragu Gitaho who died intestate on 28th April 2017. The Deceased was said to have been survived by the following persons;-
 - (i) Lawrence Gitaho Kangaru - Father
 - (ii) Grace Gathoni Mwathi - Widow
 - (iii) Elizabeth Wangari Kiragu - Daughter
 - (iv) Margaret Wanjiku Kiragu - Daughter
 - (v) Lawrence Gitaho Kiragu - Son
 - (vi) Jane Nyambura Kiragu - Daughter
5. One Elizabeth Wangare Karani filed an Affidavit of protest dated 2nd December 2021, claiming that she was also a wife of the Deceased and that they bore two children together. The protest was heard in the Magistrates Court at Mukurwe-ini.
6. The genesis of this application is the Ruling which was delivered by Hon. Matutu Principal Magistrate in Mukurwe-ini Succession Cause No. 164 of 2014. In that ruling the Learned trial magistrate confirmed the Grant of letters of Administration made to the Applicant and the Respondent on 27th November 2018. The court further directed that the estate would be distributed as follows;-
 - (a) LR No. Muhito/Mbiuni/100 to be registered to Grace Gathoni Mwathi absolutely to hold in trust for herself and her children with the Deceased.
 - (b) Monies held at Equity Bank, Kangemi Branch Account Number 137016195 - 2795 to be shared equally between Grace Gathoni Mwathi and Elizabeth Wangu Karani.
7. Being aggrieved by this decision the Applicant filed a Memorandum of Appeal dated 25th July 2024. She prays that execution of the confirmed grant be stayed pending the hearing and determination of her appeal.

Analysis and Determination

8. I have considered this application, the reply filed thereto as well as the written submissions on record.
9. At this point the court is not required to delve into the merits or otherwise of the intended appeal. All the court has to determine is whether the Application for stay is merited.



10. Stay of Execution pending Appeal is provided for under Order 42 Rule 6 (2) of the Civil Procedure Rules which sets out the principles that the court should consider while deciding whether to grant a stay or not. Order 42 Rule 8 provides that:-

“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.”

11. From the foregoing, the Applicant should satisfy the court that:

- (a) Substantial loss may result to him unless the order is made;
- (b) That the application has been made without unreasonable delay; and
- (c) The applicant has given such security as the court orders for the due performance of such decree or order as may ultimately be binding on him.

12. The ruling which application emanates from was delivered on 24th June 2024. This application for stay of execution was not filed until 5th November 2024 – a period of four (4) months after the ruling was delivered. Although I would not term this delay as inordinate no explanation has been given as to why the Applicant took so long to file the application.

13. The applicant is required to satisfy the court that she stands to suffer substantial loss if the order of stay is not made. In the case of *Tropical Commodities Suppliers LTD & others v International Credit Bank LTD (In Liquidation)* [2004] 2 EA the court stated thus

“Substantial loss does not represent any particular mathematical formula. Rather it is a qualitative concept. It refers to any loss great or small that is of real worth or value as distinguished from a loss without value or a loss that is merely nominal.”

14. Similarly the Court of Appeal in the case of *Kenya Shell Ltd v Kibiru & Another* (1986) KLR 410, held that:

“Substantial loss in its various forms, is the cornerstone of both jurisdictions for granting stay.”

15. In *James Wangalwa & Another v Agnes Naliaka Cheseto* [2012] eKLR, the court held as follows:-

“No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by Rule 6 of the CPR. This is so because execution is a lawful process itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42. The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the applicant as the successful party in the appeal.... the issue of substantial loss is the cornerstone party in the appeal.... The issue of substantial loss is the



cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.” [emphasis my own]

16. The Applicant has raised the issue of rents which were being collected from rental units. This rental income is quantifiable and if the applicant succeeds on appeal she can be compensated in monetary terms.
17. The other issues raised by the applicant in her submissions are matters which in my view this court cannot comment on. They are matters to be argued in the main appeal.
18. Finally I find no merit in this application. The same is dismissed in its entirety. Costs will be met by the Applicant.

DATED IN NYERI THIS 11TH DAY OF JULY 2025

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MAUREEN A. ODERO

JUDGE

