



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**In re Estate of Joseph Runanu Wamaria (Deceased) (Succession Cause  
16 of 2017) [2025] KEHC 12565 (KLR) (11 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12565 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE 16 OF 2017  
PN GICHOHI, J  
SEPTEMBER 11, 2025**

**BETWEEN**

**NOAH WAMARIA RUNANU ..... 1<sup>ST</sup> ADMINISTRATOR**

**BEATRICE WANJIKU RUNANU ..... 2<sup>ND</sup> ADMINISTRATOR**

**MONICA WANGUI RUNANU ..... 3<sup>RD</sup> ADMINISTRATOR**

**AND**

**NAFTALI KAMAU RUNANU ..... PROTESTOR**

**RULING**

1. The Administrators/ Applicants herein filed two applications before this court and both were dated 15<sup>th</sup> August 2025 and brought under certificate of urgency.
2. The first Chamber Summons' primary purpose was to seek leave to have the second Summons heard urgently during the court's August vacation. Leave was granted.
3. The Applicants were directed to serve the second Summons which is the main application brought under section 45 and 47 of the Law of Succession Act Cap 160 and Rule 73 of the Probate and Administration Rules. They sought for the following Orders that-
  1. This Application be certified urgent and the same be heard ex parte in the first instance.
  2. This Honourable Court be pleased to issue an injunctive order restraining the Protester/ Respondent herein from selling, cutting down trees and/or burning charcoal from any other portion of L.R. NO. 6387/1 (IR. 30421) other than the 20 acres that he presently occupies pending the hearing and determination of Nakuru Civil Appeal No. COACA E145 of 2025: Noah Wamaria Runanu, Beatrice Wanjiku Runanu, Monica Wangui Runanu (Suing as the Legal Representatives of the Estate of the late Joseph Runanu Wamaria (Deceased)) and until the eventual distribution of the estate.



3. This Honourable Court be pleased to issue an order staying distribution of the estate of Joseph Runanu Wamaria (Deceased) pending the hearing and determination of Nakuru Civil Appeal No. COACA E145 of 2025: Noah Wamaria Runanu, Beatrice Wanjiku Runanu, Monica Wangui Runanu (Suing as the Legal Representatives of the Estate of the late Joseph Runanu Wamaria (Deceased)).
4. This Honourable Court be pleased to issue any other further orders as may meet the ends of justice in this matter.
5. The costs of this application be in the cause.
4. The application is based on the grounds on the face of the Summons and Supported by the Affidavit of the 2<sup>nd</sup> Administrator/Applicant, sworn on even date.
5. The deponent stated that on 18<sup>th</sup> June, 2025, this Court dismissed their Summons for Review dated 28<sup>th</sup> September, 2022. However, they, together with all the other beneficiaries, with the exception of the Protester/Respondent, were dissatisfied with this ruling, and have since lodged an appeal with the Court of Appeal at Nakuru serialized as Nakuru Civil Appeal No. COACA E145 of 2025.
6. It is stated that while the Appeal is pending hearing and determination, the Protestor has embarked on massive and deliberate destruction of the indigenous trees, intensive logging and rampant charcoal burning on the property which activities are likely to render the Appeal nugatory.
7. She stated that the deceased had previously distributed his 164-acre property, with 20 acres allocated to the second house, to which the protester belongs. She claimed that the protester currently occupies the entirety of this 20-acre parcel but is destroying property on other parts of the land.
8. It is her contention that these actions have caused mayhem and havoc and disrupted the family's peace as the Protester attempts to acquire an additional 24 acres. She cited the judgment of 26<sup>th</sup> May, 2022, stating that the protester is only entitled to 7.4 acres, not the 44 acres he is allegedly seeking.
9. While reiterating the grounds of the application, she emphasised that the protester is occupying the entire 20-acre portion to the exclusion of the five other beneficiaries from the second house, who are content with their share and are not interested in the additional 24 acres.
10. In conclusion, she stated that the Appeal has high chances of success and thus the current application seeking injunctive Orders is necessary to preserve the Estate. Accordingly, that unless the orders sought in this application are granted, the appeal would be rendered useless, due to the Protester's actions.
11. The Protestor opposed this application vide a Replying Affidavit sworn on 3<sup>rd</sup> September, 2025. He argued that the Administrators' application is misconceived, frivolous, and an abuse of the court process as it seeks to re-litigate issues that have already been addressed and concluded by the court. He claimed that the Administrators have failed to demonstrate their entitlement to the stay orders they are seeking.
12. He denied the Administrators' claims that he has been destroying property on the land. He asserted that the photos they submitted as evidence were previously used in a criminal case against him, being Rumuruti MCCR E110 of 2023, where he was acquitted.
13. He stated that the court has already confirmed the distribution, which allocated the second house, where he belongs, 44 acres and therefore maintained that the Administrators' refusal to implement the court-confirmed distribution of the estate is the cause of the conflict.



14. He further alleged that the Administrators are acting out of sheer selfishness and cruelty and have harassed and intimidated the second house for years, delaying the matter to deny them their inheritance.
15. The Protestor concluded that the Administrators' appeal has no merit and that their application should be dismissed so that the Estate can be finalised for the benefit of all beneficiaries.
16. In a rejoinder vide a further affidavit sworn by the 2<sup>nd</sup> Administrator/Applicant, the Administrator refuted the Protestor's claims. She stated that the Protestor is not the first-born son of the second house, as he claimed, but the fourth-born. She also asserted that he is the only beneficiary from the second house who has expressed dissatisfaction with the 20 acres allocated to them by the deceased.
17. She highlighted that the other members of the second house, including the Protestor's mother, have acquired their own land elsewhere and are satisfied with the 20 acres.
18. Regarding the allegations of logging, she maintained that the Protestor's actions of massive logging and charcoal burning are causing serious environmental damage and undermining the Administrators' authority to preserve the property of the estate.
19. On the alleged acquittal of the criminal charges in Rumuruti MCCR E110 of 2023, she explained that Naftali was acquitted only because the prosecution failed to produce the Certificate of Confirmation of Grant.
20. The Affiant also contested the authenticity of the demand letters annexed by the Protestor, stating they were written by an advocate not formally appointed in the case. She termed this a ploy to intimidate the Administrators while the Court of Appeal handles the pending matter regarding distribution of the estate.
21. In conclusion, she argued that the Administrators' application is meritorious and necessary to preserve the property for all beneficiaries adding that the pending appeal is arguable with a high chance of success and that allowing the summons will prevent prejudice to the other beneficiaries.
22. In her oral submissions on 8/9/2025, Ms Grace Ndinda who was holding brief for Mr. Mbabu for the Applicants relied on the Summons grounds thereof, supporting Affidavit as well as Further Affidavit. She urged the Court to allow Summons as prayed for purposes of preserving the estate property pending hearing and determination of the Appeal No. E145 of 2025 at the Court of Appeal.
23. The Respondent did not attend the Court.

### **Analysis and Determination**

24. After considering the material placed before this court by both parties, the issues for determination are:-
  1. Whether this court can issue stay Orders as sought.
  2. Whether this Court can issue injunctive Orders pending Appeal.
  3. Who bears costs of this Application?
25. It is a fact that the Administrators/Applicants have already filed an appeal to the Court of Appeal being Nakuru Civil Appeal No. COACA E145 of 2025 which appeal is against the entire ruling by this Court dated 18<sup>th</sup> day of June, 2025 which disallowed the applicants' summons for review dated 28<sup>th</sup> September, 2022.



26. This Court's ruling of 18<sup>th</sup> June, 2025, did not issue any positive orders that are capable of being subjected to a stay. To be specific this Court held:-
- “In conclusion, this Court finds the application without merit. It is therefore disallowed with no orders to costs.”
27. This Court did not order the parties to do anything or refrain from doing anything. The dismissal was a negative order. The applicants are, in essence, seeking a stay of a negative order.
28. It is a well-established principle of law that a stay of execution cannot be ordered against a negative order. Indeed, the Court of Appeal, face with a similar Application in the case of *Western College of Arts and Applied Sciences v EP Oranga & 3 others*[1976] KECA 15 (KLR) stated thus:-
- “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 fund to make a payment out of that fund. In the instant case, the High Court has not ordered any of the 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 an application for a stay, it is so ordered.”
29. Having dismissed the application for review of the judgement by Rachel Ngetich J, which provided mode of distribution, then that means this court cannot be asked to stay distribution.
30. In regard to the prayer for injunctive orders, this Court is functus officio and therefore cannot grant the relief sought.
31. In conclusion, the entire application dated 15<sup>th</sup> August, 2025 is without merit and is dismissed with cost to the Respondent.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 11<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**PATRICIA GICHOHI**

**JUDGE**

In the presence of:

Ms. Ndida for Mr. Mbabu for Applicants

Naftali Kamau Runanu /Respondent in person (absent)

Kamau, Court Assistant

