



**In re Estate of Mirikwa Werimo (Deceased) (Succession Cause  
296 of 2004) [2024] KEHC 1532 (KLR) (16 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1532 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
SUCCESSION CAUSE 296 OF 2004  
PJO OTIENO, J  
FEBRUARY 16, 2024**

**IN THE MATTER OF THE ESTATE OF MIRIKWA WERIMO (DECEASED)**

**BETWEEN**

**PETER MAKOKHA MIRIKWA.....1ST PETITIONER  
HELLEN AUMA MIRIKWA ..... 2ND PETITIONER  
FRANCIS WELIMO WAKWANALO ..... 3RD PETITIONER  
JOSEPH ONYANGO MIRIKWA ..... 4TH PETITIONER**

**VERSUS**

**GEORGE WERIMO MIRIKWA .....1ST OBJECTOR  
FRANCIS ONG'ONG'O MIRIKWA .....2ND OBJECTOR  
ROBERT KULUMBANI MIRIKWA ..... 3RD OBJECTOR**

**RULING**

1. The decision of the Court dated 18/6/2021 aggrieved Peter Makokha Mirikwa, Wakwanalo Mirikwa Werimo, Joseph Onyango Mirikwa and Stephen Mukholi Mirikwa, who then filed a notice appealing seeking to challenge the whole of the said Judgment. The notice was dated 12.10.2021 but filed in Court on 30.11.2021.
2. On the face of the Affidavit filed in support and sworn by Peter Makokha Mirikwa, the grievance of the appellant is revealed to be the alleged fact that the grant was confirmed and estate distributed equally among the seventeen (17) heirs of the deceased against their wish yet the cause initiated and progressed with the consent of all family members.
3. On the pendency of an appeal the deponent exhibited a revenue receipt showing that an application for extension of time, No 151 of 2021, was filed and was pending before the Court of Appeal at Kisumu. On the need to grant interim stay, the deponent revealed to Court that they had been summoned to appear before the Assistant County Commissioner on the 8.11.2021.



4. The Notice of Motion was resisted by the Affidavit sworn by Hellen Auma Mirikwa on the 10.12.2021 as well as grounds of opposition also dated the same day. The two documents stress the fact that the Judgment was notified to all parties and denies that the same was an *ex parte* Judgment pursuant to which a Certificate of Confirmation of grant had been issued by the Court. The existence of a consent on distribution was deemed just as it was stressed that there was no appeal ever filed nor pending before the Court of Appeal and that the Notice of Appeal exhibited was an afterthought and of no consequence having been filed belatedly out of time and without leave. The application and the Notice of Appeal were viewed as a design to delay the implementation of the Certificate of Confirmation of grant and the application was termed meritless and fatally defective.
5. Even though the Court directed that parties file and exchange Submissions, only the Respondent's Submissions are on record having been filed on the 24.2.2022. None is on the file as having been filed by the Applicant.
6. In addition, when the matter came up before Court on the 30.10.2023, Mr. Nandwa Advocate informed the Court that the application for extension of time that was before the Court of Appeal had been dismissed with the consequence that there was no prospect of any appeal being filed.
7. To this Court, without pending appeal, there is no jurisdiction and it is wholly anomalous for the Court to grant orders of stay because the pedestal upon which an order of stay is granted is the pendency of the appeal.
8. In the circumstances revealed in this matter it would be futile to purport to consider the application for stay when the Court is made aware that none is pending.
9. Accordingly, the application dated 24.11.201 is adjudged to have no basis and is dismissed. Being a family matter, each party shall bear own costs. Let the administrators now proceed diligently and expeditiously to implement the grant, if the same has not been done.
10. Mention on for the administrators to report to Court on the progress made in concluding the administration.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 16<sup>TH</sup> DAY OF FEBRUARY, 2024.**

**PATRICK J. O. OTIENO**

**JUDGE**

**In the presence of:**

No appearance for parties

Court Assistant: Polycap Mukabwa

