



In re Estate of Gideon Muthomi M’Tierandu (Deceased) (Succession Cause 160 of 1997) [2024] KEHC 1463 (KLR) (15 February 2024) (Ruling)

Neutral citation: [2024] KEHC 1463 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 160 OF 1997
TW CHERERE, J
FEBRUARY 15, 2024**

**N THE MATTER OF THE ESTATE OF GIDEON MUTHOMI M’TIERANDU (DECEASED)
AND
IN THE MATTER OF APPLICATION FOR STAY OF EXECUTION**

BETWEEN

TSILLA NKIROTE ADMINISTRATRIX

AND

ZIPPORAH KARAMBU MUTHOMI PROTESTOR

RULING

1. By summons for confirmation filed on 05th September, 2022, Tsilla Nkirote (Administratrix/Applicant) applied to distribute deceased’s estate to among others herself.
2. Prior to the hearing of that application, an issue arose concerning whether the Administratrix/Applicant was a wife of deceased and beneficiary of his estate.
3. By a ruling dated 27th April, 2013, this court ruled that the Administratrix/Applicant was neither a wife of the deceased nor a beneficiary of deceased’s estate but that the children borne out of her relationship with deceased were beneficiaries.
4. By summons dated 20th September, 2023, Administratrix/Applicant seeks stay of orders dated 27th April, 2013 pending hearing and determination of Nyeri Civil Appeal No. E107 of 2023. The summons is supported by an affidavit sworn by Administratrix/Applicant on 20th September, 2023 in which she avers that she is wife and beneficiary of the deceased and that she will suffer substantial loss if the orders sought are not granted and that Respondents do not stand to suffer any prejudice if the application is allowed. Annexed to the supporting affidavit is a notice of appeal filed on 08th May, 2023.



5. Courts have severally held that the power to grant an order of stay pending appeal is discretionary as was observed by the Court of Appeal in *RWW v EKW* (2019) eKLR that:

“The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. However, in doing so, the court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs. Indeed, to grant or refuse an application for stay of execution pending appeal is discretionary. The Court when granting the stay however, must balance the interests of the Appellant with those of the Respondent.”

6. Having considered the application herein which is unopposed, it is hereby ordered that the orders in ruling dated April 27, 2013 be and are hereby stayed pending hearing and determination of Nyeri Civil Appeal No. E107 of 2023.
7. Costs shall be in the cause

DATED AT MERU THIS 15th DAY OF February 2024

T. W. CHERERE

JUDGE

Appearance

Court assistants - Kinoti/Munene

For Applicant - Mr. Otieno for Otieno Obwanda & Co. Advocates

For Protestor - Mr. Mwanzia for Muia Mwanzia & Co. Advocates

