



In re Estate Kibowen Komen (Deceased) (Succession Cause 500 of 1997) [2024] KEHC 3582 (KLR) (16 April 2024) (Ruling)

Neutral citation: [2024] KEHC 3582 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 500 OF 1997
SM MOHOCHI, J
APRIL 16, 2024**

BETWEEN

**GRACE SAMSON KOMEN 1ST APPLICANT
MICHAEL KIGEN KOMEN KOMEN 2ND APPLICANT
MOHAMED TANUI KOMEN 3RD APPLICANT**

AND

**PETER KIPRUTO KOMEN 1ST RESPONDENT
ABDULGHANI MOHAMED KOMEN 2ND RESPONDENT
ABRULKADIR MOHAMMED 3RD RESPONDENT
EVAN KIPTUI KOMEN 4TH RESPONDENT**

RULING

1. Upon considering the application dated 15th April, 2024, filed under Certificate of Urgency brought pursuant to Order 42 Rule 49 of Civil Procedure Rule and 63 of Probation and Administration Rules.
2. That this Court issues Orders of stay of execution of ruling pending an impending appeal against my ruling dated 20th March, 2024.
3. Having heard the parties for and against, I am constrained to disallow the application for the following reasons: -
 - a. There is nothing to stay my ruling of 20th March, 2024 is a negative order that cannot be stayed. Case Law: Western College of Arts & Applied Science Vs. Oranga & Others 1976 – 1980 KLR: But what is there to be executed in Judgement.”



- b. That by staying proceedings that are over 27 years without a flinch as to what prejudice, the delay shall occasion the broad and diverse interest groups of beneficiaries, 2nd generation and 3rd generation beneficiaries, creditors, interested parties is in itself negating the principles of Order 63 which is intended to prevent ends of justice being defeated.
- c. Thirdly, the Applicants have not demonstrated what substantial loss shall be occasioned on them should the proceedings proceed/continue.
- d. I reiterate my holding at paragraph 36 of my ruling dated 20th March, 2023 that beneficiaries are only entitled to the net estate and that such entitlement only crystallizes upon confirmation transmission and registration nothing less.
- e. Having been reluctant to condemn parties in family disputes, this is a classical move by the Applicant to weaponized the litigation and having been unsuccessful I shall condemn her to costs.
- f. For the foregoing reasons, I exercise my discretion and find the application dated 15th April, 2024 to be devoid of merit.
The challenge to the Ruling can continue whilst these proceedings continue.
- g. The application is dismissed with costs to the Respondents.

It is so Ordered.

SIGNED, DATED AND DELIVERED AT NAKURU ON THIS 16TH DAY OF APRIL 2024.

MOHOCHI S. M.

JUDGE

