



REPUBLIC OF KENYA



**Hassan v Njue; Kimanthi & 10 Others (Interested Party) (Civil Appeal
E030 of 2023) [2024] KEHC 6921 (KLR) (22 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6921 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E030 OF 2023
GMA DULU, J
MAY 22, 2024**

BETWEEN

MARRIAM K HASSAN APPELLANT

AND

ALIMA MARUU NJUE RESPONDENT

AND

FLORENCE MUTINDI KIMANTHI & 10 OTHERS INTERESTED PARTY

RULING

1. Before me is an application by way of Notice of Motion dated 4th August 2023 filed by Marriam K. Hassan through counsel Anastacia K. Singi under Order 51 Rule 1 Order 42 Rule 6 of the [Civil Procedure Rules 2010](#), as well as Section 1A, 1B, and 3A of the [Civil Procedure Act](#) (Cap.21).
2. The prayers in the application are as follows:-
 1. (Spent)
 2. (Spent)
 3. That the court issues temporary orders of stay of the proceedings, orders and any directions for hearing issued in Voi Kadhi Court Succession Petition No E008 of 2022, pending the hearing and determination of the appeal.
 4. That costs of this application be provided for.
3. The application has grounds on the face of the Notice of Motion that the applicant filed the succession petition at Makindu Law Courts being Succession Cause No E021 of 2022; on 28th June 2022; that the respondent thereafter filed a petition for special grant of letters of administration in Voi Kadhi's Court on 20th September 2022 being Petition E008 of 2022, which was three month's later; that the



applicant then filed an application of protest on 25th October 2022, and contended that she did not submit to the jurisdiction of the Kadhi's court; that the Senior Principal Kadhi then delivered a ruling on 15th December 2022 directing that the proceedings in Voi be stayed pending the decision in the earlier Makindu Succession Cause; that the respondent thereafter filed an affidavit of protest in the Makindu case and summons for revocation of grant which was still pending; that a newly posted Kadhi to Voi delivered another ruling on 5th July 2023 which appeared to be an appeal decision against the earlier ruling, as it directed that the succession cause in Makindu and the succession cause in Voi be heard concurrently; that if the stay orders sought are not granted, the appeal herein will be rendered nugatory.

4. The application was filed with a supporting affidavit sworn by the appellant/applicant Marriam K. Hassan on 4th August 2023, which annexed several documents, including the ruling dated 5th July 2023 referred to herein.
5. The application is opposed through a replying affidavit sworn on 27th September 2023 by Alima Maruu Njue the respondent in which it was deponed that the deponent is a granddaughter of the deceased Mwongela Isika Kingu, and that the appellant Marriam K. Hassan married the late Mwongela Isika Kingu grandson; and that the appellant and her son wanted to defeat justice since they decided to sell land parcel number Kimbuluyu/Mikuyuni/428 to several buyers without involving the respondent.
6. I note that several affidavits were filed herein by people who claim to have an interest in the assets of the estate, either as beneficiaries or purchasers of land from some beneficiaries.
7. The respondent Alima Maruu Njue also filed a further affidavit she swore on 8th November 2023 in which it was deponed that the rightful heirs of the deceased were disclosed in the Kadhi's court as three (3) children Kabibi Awadh, Zaina Omar Njue, and Mutie Isika.
8. The application was canvassed through written. I have perused and considered the submissions filed by A. K. Singi & Company Advocates for the applicant and submissions filed by Raphael Musau Kiluva on behalf of interested parties. I have not seen submissions by Alima Maruu Njue.
9. Since an appeal has already been filed against the later orders of the Hon. Kadhi issued on 5th July 2023, in my view not allowing the stay orders sought will render the appeal nugatory, as irreparable damage will have been done if the two cases are heard and determined before hearing of the same appeal. The facts and circumstances herein, satisfy the requirements for granting stay orders under Order 42 rule 6 of the *Civil Procedure Rules*.
10. In determining this application also, I have taken into account that the appeal filed is arguable. I will however order that the appeal be expedited.
11. I thus allow the application and order as follows:-
 - i. I hereby issue temporary stay orders of the proceedings orders and any directions for hearing issued in Voi Kadhi's Succession Petition No E008 of 2022 following the ruling delivered by the Hon. Kadhi on 5th July 2023, pending hearing and determination of the appeal herein.
 - ii. The applicant will however ensure that the present appeal is expedited and heard and determined within twelve (12) months from today, otherwise the stay orders granted herein will automatically lapse and be of no effect.
 - iii. Costs of this application will abide the decision in the appeal.

DATED, SIGNED AND DELIVERED THIS 22ND DAY OF MAY, 2024 IN OPEN COURT AT VOI.



GEORGE DULU

JUDGE

In the presence of:-

Trizah – Court Assistant

A. K. Singi for appellant/applicant

Respondent in person

