



In re Estate of Gideon Muthomi M’Tuerandu (Deceased) (Succession Cause 160 of 1997) [2024] KEHC 6199 (KLR) (23 May 2024) (Ruling)

Neutral citation: [2024] KEHC 6199 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 160 OF 1997**

TW CHERERE, J

MAY 23, 2024

IN THE MATTER OF THE ESTATE OF GIDEON MUTHOMI M’TUERANDU (DECEASED)

AND

IN THE MATTER OF APPLICATION FOR STAY OF EXECUTION

BETWEEN

TSILLA NKIROTE 1ST ADMINISTRATRIX

ZIPPORAH KARAMBU MUTHOMI 2ND ADMINISTRATRIX

AND

JANE KATHAMBI RANGU 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, 2023 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. Applicant also contends 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. By her response filed on 07th December, 2023, Zipporah Karambu Muthomi (3rd Administratrix / Respondent) stated that the court order of 27th April, 2023 is an order incapable of being stayed.
6. I have considered the application in the light of the affidavits on record. 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.”

7. Having considered the application herein, I agree with the Respondent that the order that Applicant is not a widow of the deceased is incapable of being executed or stayed.
8. The application dated 20th September, 2023 is thus unmerited and it is dismissed.
9. The application for confirmation dated 04th April, 2022 and protests thereof shall be served on all beneficiaries for hearing by way of viva voce evidence.
10. Parties are directed to file and serve their respective witness statements and/or affidavits
11. Mention on 19th September, 2024 to confirm compliance and to take a hearing date

DATED AT MERU THIS 23RD DAY OF MAY 2024

T. W. CHERERE

JUDGE

Appearance

Court Assistants - Kinoti/Munene

For 1st Administratrix/Applicant - Mr. Otieno for Otieno Obwanda & Co. Advocates

For 2nd Administrator/Respondent – N/A

For 3rd Administratrix/Respondent - Mr. Mwanzia for Muia Mwanzia & Co. Advocates

For Protestor - Mr. Mwirigi for Mbogo & Muriuki Advocates

