



REPUBLIC OF KENYA



In re Estate of Elizabeth Mukonciru M'kioga (Deceased). (Civil Appeal 61 of 2022) [2024] KEHC 10999 (KLR) (12 September 2024) (Ruling)

Neutral citation: [2024] KEHC 10999 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL 61 OF 2022
JM OMIDO, J
SEPTEMBER 12, 2024
IN THE MATTER OF THE ESTATE OF ELIZABETH MUKONCIRU
M'KIOGA (DECEASED)**

BETWEEN

ERASTUS KIRIMANIA KIOGA 1ST APPELLANT

EDWARD MWORIA KIOGA 2ND APPELLANT

AND

WINNIE KANANU KIOGA RESPONDENT

(Being an Appeal from the Judgement and Decree of Hon. T.M. Mwangi, Senior Principal Magistrate delivered on 6th May, 2022 in Meru CM's Court Succession Cause No. 281 of 2017)

RULING

1. This appeal emanated from the judgement and decree of Hon. T.M. Mwangi delivered on 6th May, 2022 in Meru CM's Court Succession Cause No. 281 of 2017.
2. Although the matter is today slated for judgement, one will notice that I have titled the instant pronouncement as a ruling. The reasons, which emerge from the ground proffered by the Respondent in her submissions that there is no appeal capable of being addressed and/or determined, will shortly be addressed.
3. The record bears it that on 26th January, 2023, my brother Muriithi, J. in his ruling rendered on even date on an application by Motion on Notice dated 26th October, 2022 that sought for an order for stay of execution of the judgement in Meru CMCC Succession Cause No. 281 of 2017, pending the hearing and determination of the appeal, ordered as follows:



1. An order for stay of execution of the judgement of the trial court and confirmed grant emanating therefrom is granted.
 2. The status quo at the suit property shall be maintained pending hearing of the appeal, and the order shall be registered against the title of the suit property.
 3. The Record of Appeal shall be filed within 60 days, and in default the appeal shall lapse all stay of execution shall be discharged.
 4. Costs of the application shall abide the outcome of the appeal.
(Underlined emphasis).
4. It is instructive from the record that the Appellant filed the Record of Appeal dated 12th January, 2024 on 15th January, 2024, about one year after my brother had rendered his ruling. That then means that the same was filed well outside the timelines that the court granted on 26th January, 2023 in the ruling referred to above.
 5. I have had the advantage of perusing the record and can state with certainty that there were no orders sought or obtained by the Appellant to vary the terms of the ruling or expand the time within which to file the Record of Appeal.
 6. No doubt, order 3 in the ruling was self-executing, in that the appeal would stand dismissed if the Record of Appeal was not filed within 60 days. That then meant that at the lapse of the 60 days, the appeal herein automatically stood dismissed as there was no compliance by the Appellant. I note that there has never been filed any application for its reinstatement. There is therefore no appeal before me capable of being determined, the same having been dismissed, hence why this determination is a ruling and not a judgement.
 7. Being of the foregoing findings, there is no basis upon which this court can render a judgement on an appeal that stood dismissed as the appeal does not exist in the wake of the above position.
 8. Section 27 of the *Civil Procedure Act*, Cap 21 Laws of Kenya dictates that costs shall follow the event. In line with that statutory provision, costs of this appeal shall be borne by the Appellants.

DELIVERED (VIRTUALLY), DATED & SIGNED THIS 12TH DAY OF SEPTEMBER, 2024.

JOE M. OMIDO

JUDGE

For 1st Appellant: No appearance.

For 2nd Appellant: No appearance.

For Respondent: Mr. Maheli.

Court Assistant: Mr. Kinoti.

