



REPUBLIC OF KENYA



**In re Estate of Kariithi Gaitho Gachau Deceased (Succession Cause 815 of 2012) [2024] KEHC 12474 (KLR) (11 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12474 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
SUCCESSION CAUSE 815 OF 2012  
MA ODERO, J  
OCTOBER 11, 2024  
IN THE ESTATE OF KARIITHI GAITHO GACHAU – DECEASED**

**RULING**

1. The Applicant herein James Maina Kariithi filed a Summons dated 17<sup>th</sup> May 2024 seeking the following orders;-
  - “(1) Spent
  - (1) Spent
  - (2) That there be a stay of execution of the order of the court issued on 2/5/2024 pending hearing and determination of the summons for review dated 21/7/2022.”
2. The application was premised upon Rules 49 and 73 of the *Probate and Administration Rules* and was supported by the Affidavit of even date sworn by the Applicant.
3. The Respondent Paulo Wanjohi Kareithi opposed the application. The matter was canvassed by way of written submissions. The Applicant filed the written submissions dated 15<sup>th</sup> July 2024 whilst the Respondent relied upon his written submissions dated 16<sup>th</sup> July 2024.
4. The Applicant has sought a stay of the orders made by the court on 2<sup>nd</sup> May 2024. I have perused this file and I note that no proceedings took place on that date. I do believe that the orders the Applicant is referring to are the orders which were made on 22<sup>nd</sup> April 2024.
5. By the orders of 22<sup>nd</sup> April 2024 the Applicant was directed to deposit in court the Title Document for LR No. Naromoru/Kiama Thage/BLK 1/193. The Applicant prays that this order be stayed pending the hearing and determination of the Summons dated 21<sup>st</sup> July 2022.
6. The Applicant pleads that there is still pending his application seeking review of the mode of distribution of the estate. That should the order of 22<sup>nd</sup> April 2024 be executed he is likely to suffer substantial loss as he has invested in making developments on the suit land.



7. On his part the Respondent complains that the Applicant never appears in court when the matter is listed. He prays to have the distribution of the estate finalized.
8. I have considered the application before me as well as the submissions filed by both parties.
9. The grounds upon which a stay may be granted are provided for by Section 42 Rule 6 (2) of the Civil Procedure Rules. These are that;-
  - (1) The application has been made without unreasonable delay.
  - (2) The applicant is likely to suffer substantial loss if the stay is not granted.
  - (3) That security for due performance of the decree.
10. However inspite of the parameters above the question of whether or not to grant a stay lies within the discretion of the Court.
11. I have carefully considered this application, I note that the orders in question were made in the absence of the Applicant. I also note that there is in the file an application dated 21<sup>st</sup> July 2022 which is pending for hearing. This application was filed earlier in time and ought to have been heard first.
12. Section 47 of the Law of Succession Act Cap 160 Laws of Kenya provides that

“The High Court shall leave jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.”
13. Similarly Rule 73 of the Probate and Administration Rules provides

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”
14. I note that both the Applicant and the Respondent are acting in person and as such may not be aware of the intricacies of the legal processes. In order not to close the door of justice against the Applicant I will stay the orders made by the court on 22<sup>nd</sup> April 2024 to enable him prosecute the application dated 21<sup>st</sup> July 2022. This being a family matter I make no orders on costs.

**DATED IN NYERI THIS 11<sup>TH</sup> DAY OF OCTOBER 2024**

**MAUREEN A. ODERO**

**JUDGE**

