



**In re Estate of Inderjeet Singh Rattan Singh aka Inderjeet Singh aka Inderjeet S sohanpal
(Deceased) (Succession Cause 38 of 2018) [2024] KEHC 12180 (KLR) (7 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12180 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE 38 OF 2018**

G MUTAI, J

OCTOBER 7, 2024

**IN THE MATTER OF THE ESTATE OF INDERJEET SINGH RATTAN SINGH
AKA INDERJEET SINGH AKA INDERJEET S SOHANPAL (DECEASED)**

BETWEEN

ARJINDERPAL SINGH BAMRAH PETITIONER

AND

SUKHJIT KAUR OBJECTOR

AND

ASHA RAJAB INTERESTED PARTY

RULING

Introduction

1. Two applications are pending before this Court. The first one was filed on 15th March 2024 by the interested party. In this application, the interested party seeks a stay of the execution of the ruling that this Court delivered on 4th August 2024 and also a stay of proceedings in this matter. The second application seeks the issuance of letters of administration ad colligenda bona. The said petition was filed on 21st June 2024 by Sukhjit Kaur Sohanpal and Prince Sohanpal Inderjeet. I will first consider the application filed on 15th March 2024, for if I find merit in it, there will be no need to consider the second application.
2. Before doing so I must contextualize the matter by giving background information.



3. This Court delivered a ruling on 4th August 2023 vide which it invalidated the last will and testament of the deceased. At paragraph 104 of the said ruling I ordered as follows:-

“To preserve the estate I direct Sukhjit Kaur and Prince Sohanpal Inderjeet to file a joint petition for letters of administration intestate within 30 days of this ruling. I make no orders as to costs as this is a family matter. Each party will therefore bear own costs.”

4. Asha Rajab, the interested party, who was the main beneficiary of the invalidated will, was aggrieved by my decision and filed an appeal. I shall hereafter refer to the interested party as “Asha Rajab”. At the time of writing this ruling, the Court of Appeal has not delivered a ruling regarding Asha Rajab’s application for stay of execution and stay of proceedings pending appeal.

The Notice of Motion Dated 15th March 2024

5. Asha Rajab filed a Notice of Motion dated 15th March 2024 under sections 1A and 3A of the *Civil Procedure Act* and Orders 42 Rule 6 and Order 51 Rule 1 of the *Civil Procedure Rules*. Three of the orders that were sought in the said motion are spent. The only prayers that are pending are for:-

“4. That pending the hearing and determination of the intended appeal there be a stay of execution of the orders made by Hon Justice Gregory Mutai on 4th August 2023 and a stay of further proceedings of the Mombasa Succession Cause No. 38 of 2018; and

5. That costs of this application be in the cause.”

6. The application was grounded on the fact that there are applications pending before the Court of Appeal in Civil Application No. E073 of 2023. It was urged that further proceedings would render the appeal nugatory. Asha Rajab contended that the intended appeal is arguable and has overwhelming prospects of success. She urged that the respondents wouldn’t be prejudiced if the orders sought were granted.

Replying Affidavit of Sukhjit Kaur Sworn on 4th April 2024

7. The objector, Sukhjit Kaur, also known as Sukhjit Kaur Sohanpal, opposed the said application. I shall hereafter refer to the Objector as “Sukhjit.” She filed a replying affidavit she swore on 4th April 2024. In her affidavit, Sukhjit deposed that the application lacked merit and ought to be dismissed. She stated that there had been intermeddling with the estate of the deceased and listed three properties that were allegedly sold or intermeddled while the matter was pending in Court.

8. Sukhjit averred that she filed a petition for a grant of letters of administration intestate on 7th September 2023 after Prince Sohanpal Inderjeet, with whom she had been ordered to petition the court for a grant, appeared not to be willing to jointly petition for it with her. She stated that the said Petition was pending determination by this court.

Supplementary Affidavit of Asha Rajab

9. Asha Rajab, through a donee of her power of attorney, Ms Salma Akbar Ahmed, filed a supplementary affidavit sworn by the latter on 7th April 2024 in which she denied that she was involved in the impugned transfers of the three plots.



Response by Prince Sohanpal Inderjeet

10. Prince Inderjeet Sohanpal did not file an affidavit in response.

Hearing of the Notice of Motion Dated 15th March 2024

11. The matter proceeded by way of both oral and written submissions.

Submissions of Asha Rajab

12. Asha Rajab's counsel filed written submissions dated 18th April 2024. Mr Tindi, learned counsel for Asha Rajab identified the elements that are required under Order 42 Rule 6 of the Civil Procedure Rules for an order of stay of execution to issue, to wit, that it would be necessary to show that substantial loss may result if stay is not granted, that the application had been made without unreasonable delay and that the security for the due performance of such decree or order as may be ultimately be binding on the applicant had been given.

13. It was urged that I should preserve the rights of both parties pending the appeal. The Interested Party/Applicant relied on the decision of the Court *In re Estate of Solomon Mungura Mathia (deceased)* [2021]eKLR where C. Kariuki, J stated that:-

“I concur with the position endorsed by the Court in *Ndubiu Gitabi and Another v Anna Wambui Warugongo* [1988] 2 KAR, citing the decision of Sir John Donaldson M. R. in *Rosengrens v Safe Deposit Centres Limited* [1984] 3 ALL ER 198 are apt:

“We are faced with a situation where a judgment has been given. It may be affirmed or it may be set aside. We are concerned with preserving the rights of both parties pending that appeal. It is not our function to disadvantage the Defendant while giving no legitimate advantage to the Plaintiff..... It is our duty to hold the ring even-handedly without prejudicing the issue pending the appeal.....”

14. It was urged that if the execution is allowed to proceed, the objector would disinherit the interested party and that it would be difficult to undo the damage done if the interested party's appeal was successful. Therefore, I was urged to allow the application as prayed.

The Written Submissions of the Respondents

15. Sukhjit's counsels, Daly & Inamdar Advocates LLP, filed written submissions in opposition dated 15th May 2024.

16. It was submitted on behalf of Sukhjit that the applicant had the onus of satisfying the Court that she would suffer substantial loss if a stay were not granted. Secondly, the application was filed without unreasonable delay. On the substantial loss, it was urged that the applicant hadn't shown how she would suffer substantial loss if the application were denied. She relied on the case of *James Wangalwa & another vs Agnes Naliaka Cheseto* [2012]eKLR and *Kenya Industrial Estate Ltd & another vs Matilda Tenge Mwachia* [2021]eKLR.

17. It was urged that the application was filed after an unreasonable delay, as the decision was delivered on 4 August 2023, while the application was filed on 15 March 2024. Sukhjit submitted that there was a serious risk of the estate being wasted.

18. Counsel for Prince Inderjeet did not submit in respect of the stay application.



Petition for Letters of Administration ad colligenda bona

19. Before considering the merits of the stay application, I will discuss the other matter, whose determination is before me. On 21st June 2024, Sukhjit and Prince Sohanpal Inderjeet jointly filed a petition for letters of administration ad colligenda bona on the ground that it had come to their attention that there was intermeddling with the estate of the deceased by way of transfer of part of the estate of the deceased and of trespass and encroachment of part of the property of the estate of the deceased without the express authority of the court.
20. In the Joint Supporting Affidavit, Sukhjit and Prince Sohanpal Inderjeet deposed that the deceased's estate had not been administered since 2018. At the beginning of March 2024, it came to their attention that Title Number Kwale/Ramisi Phase II 55/619 had been irregularly transferred to a third party without the knowledge or consent of the beneficiaries. Upon carrying out an investigation, they found that the said property was transferred to Mr Mohamed Ali Chigoti on 2nd November 2023.
21. They further deposed that a second parcel of land, Title Number Kwale/Ramisi Phase II 55/1821, which belonged to the deceased, had been invaded by unknown people and that there were ongoing construction works.
22. They deposed that they were seeking a letter of administration to enable them:-
 - a. Write formally to all suppliers and customers of the estate's businesses, to ascertain any payment due in or out of the business;
 - b. Get statements from each of the bank accounts the deceased held with various banks to ascertain the balances;
 - c. Open a bank account in the name of the estate into which to pay the sums owing to the estate from the estate's debtors;
 - d. Renew agreements which would be beneficial to the estate;
 - e. Take a full account of the assets and liabilities of the deceased; and
 - f. Retain custody of all documents of title with respect to the assets and properties of the estate and make arrangements for their safe custody with a custodial services firm or appointed advocates subject to such undertakings as shall be jointly deemed fit.
23. They stated they would have no power to distribute the proceeds into the estate to the deceased's beneficiaries unless a full grant is issued and confirmed. They deposed that this court could issue the orders they were seeking. They also averred that issuance of the same would be in the estate's best interest.

Response by the Interested Party to the Petition for Letters of Administration ad colligenda

24. The interested party opposed the petition via a replying affidavit sworn on 23rd July 2024 by Salma Akbar Ahmed, as donee of a power of attorney granted by the interested party. It was deposed that Asha Rajab was undergoing medication.
25. The interested party's agent contended that Asha Rajab wasn't a party to the fraud allegedly committed by Mohamed Ali Chigoti and stated that her actions of accommodating the objector and her son had been met with ill will, greed, and vengefulness.



26. She denied that she was a party to the trespass ongoing in Title Number Kwale/Ramisi Phase II 55/1821 and averred that the issue of ownership of the said plot was pending determination by the Kwale Environment and Land Court being Kwale ELC Case No. 8 of 202, in which case she is the Claimant, while Sukhjit is the Interested Party. It was averred that the identities of the trespassers were known and that their names were Hamisi Mwinyi Tsumo, Hamadi Mwinyamiri, and Hamisi Bungari.
27. Asha Rajab, through her agent, accused her son, Prince Sohanpal Inderjeet, of “collecting rent from the apartments and the hotels throughout this year, and none is being accounted for and the same is being squandered for his own personal use.” Further, she stated that Prince Sohanpal Inderjeet wasn’t helping her pay for her treatment in Muscat but squandered the rental proceeds on drinking sprees. As such, she urged that he was not a suitable person to be appointed as the administrator of the estate.
28. She urged that rather than having rents collected by her son, they should be collected and deposited with the three law firms or in the alternative, the Court, for proper accountability.

Analysis of the Facts and the Law

29. As I have already indicated, I will first determine whether there should be a stay of execution of my decision pending appeal. Additionally, I must determine if there should be a stay or proceedings. I reiterate that if I should find that stay of proceedings/stay of execution is merited, then it shall not be necessary for me to determine the petition for letters of administration ad colligenda bona.
30. There is no provision in the *Probate & Administration Rules*, 1980, governing stay of execution pending appeal. Rule 63, which provides for the application of the *Civil Procedure Rules* and *High Court (Practice and Procedure) Rules* to the proceedings before the Probate and Administration Court, does not list Order 42 of the *Civil Procedure Rules* as applying to succession proceedings. Section 47 of the Act and Rule 73 of the *Probate and Administration Rules*, 1980 grants this court the power to issue such orders as are necessary to meet the ends of justice. Further, this court notes that courts of record have applied the provisions of Order 41 to succession proceedings. I see no reason why I should depart from the said practice.
31. Order 42 Rule 6 (2) of the *Civil Procedure Rules*. The said Rule provides as follows:-
 - “(2) No order for stay of execution shall be made under subrule (1) unless— (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”
32. As I understand it, a party seeking to stay the execution of a decree or order must demonstrate that the following three elements exist:-
 1. That he/she/they will suffer substantial loss unless a stay of execution is granted;
 2. That the application was filed without undue delay;
 3. That undertaking as to damages as been given.
33. The three requirements are conjunctive. For the order of stay to be issued, they must all be present.



34. It is trite law that the purpose of the stay of execution is to preserve the subject matter pending the hearing and determination of the appeal. The Court in *RWW v EKW* [2019] eKLR stated as follows:-

“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.”

35. Has the Interested Party Applicant satisfied the test? Should the orders he seeks issue? I will look at each of the 3 requirements in turn and determine if they have been met in this cause.

Will Asha Rajab suffer substantial loss?

36. The onus on the interested party was to show that she will suffer substantial loss unless a stay is granted. What amounts to “substantial loss” was discussed in the case of *James Wangalwa & another v Agnes Naliaka Cheseto* [2012] eKLR. The Court held that:-

“No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the *CPR*. This is so because execution is a lawful process. The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the Applicant as the successful party in the appeal. This is what substantial loss would entail, a question that was aptly discussed in the case of *Silverstein N. Chesoni* [2002] 1KLR 867, and also in the case of *Mukuma v Abuoga* quoted above. The last case, referring to the exercise of discretion by the High Court and the Court of Appeal in the granting stay of execution, under Order 42 of the *CPR* and Rule 5(2) (b) of the *Court of Appeal Rules*, respectively, emphasized the centrality of substantial loss thus: “...the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.”

37. The Interested Party has a pending appeal before the Court of Appeal. At the moment, no grant has been issued. Even if the grant was issued, the administrator would not have the power to distribute the estate unless it was confirmed. Administration of the estates of deceased persons is a lengthy process. The court is involved at every stage. Under the circumstances, I do not agree that she will suffer substantial loss.

Was the Application Filed Without Undue Delay?

38. I note that the Interested Party filed her Memorandum of Appeal on 21st August 2023. She filed the instant application on 15th March 2024. The application waited for seven months. That, to me, in the circumstances of this case, was an undue delay. In any case, having first applied for a stay of execution at the Court of Appeal, filing another application for similar orders before this Court would appear to me to be an abuse of the Court process.



39. Having filed an application at the Court of Appeal and not getting the orders she had sought, Asha Rajab could not properly come to this Court for the same orders. In my view, such an action is an inversion of Order 42 Rule of the *Civil Procedure Rules*. The said Rule expects, for want of a better word, a “bottom-up” application for a stay of execution, beginning with the trial Court and then to the appellate court, if a party is unsuccessful at the court below. In this case, Asha Rajab, having chosen to file the application at the appellate court, for all intents and purposes, forfeited the opportunity to file the application before this court.

Security for Costs

40. I have already stated that the three elements must be present for a stay to be issued. I have found that the first two are absent in this application. In my view, it is not necessary to consider whether an undertaking has been given or if it is required in succession proceedings.
41. In the circumstances, I find and hold that a stay of execution is not merited. Accordingly, that limb of the prayers is dismissed.

Should the Proceedings Before this Court be Stayed Pending Appeal?

42. What of stay of proceedings? J Ngugi, J (as he then was) in *Turbo Highway Eldoret Ltd vs Muniu* [2022]KEHC 10197(KLR) stated as follows in paragraphs 19 and 21 of his ruling:-

“All these factors must be considered, in a given case, in the spirit concisely expressed in Halsbury’s Laws of England, 4th Edition, Vol. 37 at p. 330: The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the Court’s general practice is that a stay of proceedings should not be imposed unless the proceedings, beyond reasonable doubt, ought not to be allowed to continue... This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases... It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground must show not merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of this case.

21. In short, a stay of proceedings is a radical remedy which is only granted in very exceptional circumstances. In the words of Ringera J. in *Global Tours & Travels Limited* (Nairobi HC Winding Up Cause No. 43 of 2000): As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of Justice..... the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously.”



43. Has the applicant demonstrated that there are exceptional circumstances? I am afraid not. As a matter of fact, there are good reasons not to grant a stay of proceedings. The parties herein all concede that one property has been transferred by a fraudster while another was encroached by trespassers who are busy constructing on it. By granting the stay of proceedings, this Court will be unable to issue grants of any sort. The estate will thus be wasted as there will be one to administer it. This will be contrary to the primary duty of this court which is to identify the beneficiaries, ascertain the assets and ultimately distribute the deceased estate to the rightful beneficiaries (see *re Estate of Edward Murithi Mutegi (Deceased)* [2021] eKLR). The court has to do this expeditiously and without delay.
44. In the circumstances, I am not persuaded that a stay of proceedings should be issued. Thus, this limb of the prayers is dismissed.

Should Letters of Administration ad colligenda bona Issue?

45. I now consider the petition for grant of letter of administration ad colligenda bona. I must determine whether the said grant should be issued in respect of this cause.
46. The Court of Appeal in *Morjaria v Abdalla* [1984]KLR 490 held that a grant ad colligenda bona is normally made where the assets of the deceased are of a perishable or precarious nature and are thus in need of quick attention.
47. In this case, the estate is in dire need of administration. If the orders are not issued, the deceased's estate will be dissipated. In these circumstances, the Court needs to appoint administrators without delay.
48. Are the applicants suitable to act as administrators? Asha Rajab has averred that they are not. She made various allegations against them. Notwithstanding the accusations, I have not seen any documentary evidence corroborating what she has stated. The Court cannot rely on mere, uncorroborated accusations to make its determination.

Final Orders

49. I have not found merit in the applications for a stay of execution and a stay of proceedings pending appeal. The same are dismissed.
50. In the circumstances, and with a view to preserving the estate, I issue letters of administration ad colligenda bona to Sukhjit Kaur Sohanpal and Prince Sohanpal Inderjeet, as prayed for in their petition, forthwith. The grant does not permit them to dispose of the capital assets of the estate of the deceased until they are granted a full grant and the said grant is confirmed under the rules of this Court or unless this Court issues further orders in that regard.
51. This is a succession matter between family members. Grant of costs against the Asha Rajab will not be helpful. In the circumstances I order each party to bear own costs.
52. Orders accordingly.

DATED AND SIGNED AT MOMBASA THIS 7TH DAY OF OCTOBER 2024. DELIVERED VIRTUALLY VIA MICROSOFT TEAMS.

GREGORY MUTAI

JUDGE

In the presence of: -

Ms Ongaki, for Prince Sohanpal Inderjeet;



Ms Nzisa, for Sukhjit Kaur Sohanpal;
Mr Tindi, for Asha Rajab Ali; and
Arthur - Court Assistant.

