



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Stanley Mugambi Muketha (Deceased) (Succession Cause
361 of 2009) [2023] KEHC 788 (KLR) (9 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 788 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 361 OF 2009
TW CHERERE, J
FEBRUARY 9, 2023**

BETWEEN

MORRIS MUTEMBEI MUGAMBI 1ST ADMINISTRATOR

EVANGELINE NKATHA MUGAMBI 2ND ADMINISTRATOR

AND

FESTUS MURIUNGI KINOTI 1ST APPLICANT

**CUSTOMER SELF SERVICE AND GENERAL CONTRACTORS COMPANY
LIMITED 2ND APPLICANT**

RULING

1. By summons dated December 20, 2022, applicants seek an order for stay of proceedings pending the hearing and determination of an intended appeal against this court's ruling delivered on October 27, 2022. The application is supported by an affidavit sworn by the Festus Muriungi Kinoti (1st applicant) on December 20, 2022. He avers that if LR No Nkuene/Uruku/762 and LR No Nkuene/Uruku/1716 are distributed as proposed in the summons for conformation dated April 2, 2019, the applicants who are innocent purchasers for value stand to suffer prejudice, irreparable loss and damage. Annexed to it is a notice of appeal filed on November 9, 2022.
2. Morris Mutembei Mugambi (1st administrator) by his affidavits sworn on January 30, 2023 opposes the application on the grounds that this matter has been pending for over 10 years. He urges the court to find that applicants do not have a beneficial interest and ought to litigate their claim outside this cause and more particularly by executing a judgment in their favour issued in Meru ELC No 17 of 2019.
3. Evangeline Nkatha Mugambi (2nd administrator) by his affidavits sworn on January 16, 2023 opposes the application on the grounds LR No Nkuene/Uruku/762 and LR No Nkuene/Uruku/1716 which applicants claim do not form part of deceased's estate and that the Applicants' fears that the said properties will be distributed in this cause is unfounded.



4. I have considered the summons in the light of affidavits on record and the issue for determination is whether a case has been made out for stay of proceedings.
5. In reading the dictum in the case of Nairobi HC Winding-Up Cause No 43 of 2000 Global Tours & Travel Ltd Ringera, J (as he then was) had held *inter alia*;

“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 for 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.”

6. In my ruling dated October 27, 2022, I ruled that applicants do not have a beneficial interest over deceased's estate. Additionally, the claim by the 2nd administrator that LR No Nkuene/Uruku/762 and LR No Nkuene/Uruku/ 1716 which Applicants claim do not form part of deceased's estate has not been disputed.
7. Deceased's estate remains undistributed since this cause was filed in 2019. After weighing the pros and cons of issuing an order of stay of proceedings, I find that it would not be in the interest of justice, or for the expeditious disposition of this matter to continue delaying the conclusion of this cause.
8. The issue of whether the appeal is arguable or not is not for this court to consider as that would amount to sitting on appeal in its own judgment. That notwithstanding, the fact that it is pleaded that LR No Nkuene/Uruku/762 and LR No Nkuene/Uruku/ 1716 which applicants claim do not form part of deceased's estate in my considered demonstrates that the applicants' appeal is unlikely to be rendered nugatory if these proceedings are not stayed.
9. Consequently, I find that the summons for stay of proceedings dated December 20, 2022 is unmerited and it is dismissed with costs to both administrators.

DELIVERED AT MERU THIS 09TH DAY OF FEBRUARY 2023

WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistant - Kinoti

For Applicant - Mr.Kariuki for Mithega & Advocates

For Respondent - Mr. Muthuri for Muthuri & Co. Advocates

For Applicants - Mr. Muthomi for John Muthomi & Co. Advocates

