



In re Estate of Washiali Luvisia aka Washiali Lubisia – Deceased (Succession Cause 525 of 2006) [2023] KEHC 3356 (KLR) (19 April 2023) (Ruling)

Neutral citation: [2023] KEHC 3356 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 525 OF 2006
SC CHIRCHIR, J
APRIL 19, 2023**

**IN THE MATTER OF ESTATE OF WASHIALI
LUVISIA AKA WASHIALI LUBISIA – (DECEASED)**

RULING

1. The Applicant’s Notice of motion dated 3rd October 2021 seeks for stay of further proceedings in this cause pending the lodging hearing and determination of the applicant’s intended Appeal.
2. The application is supported by the grounds appearing on the face of Application and an Affidavit by Mokeira Repha Brayce Advocate, for the Applicant.
3. On record is a Notice of Appeal lodged on 8th June 2022 and a draft Memorandum of Appeal. The appeal is against the judgment of this court (Musyoka J) delivered on 13th May 2022 in which the court revoked the Grant of letters of Administration and the subsequent certificate of confirmation which had been issued to the Applicant. The court at the same time appointed the Applicant herein and the objector Philister Were Wekulo as Co- administrators of the Estate of Washiali Luvisia alias Washiali Lubisia (Deceased).
4. The application is not opposed. The principles for granting stay are well established. In the case of *Chris Munga Bichage v Richard Mung Tongoi & 2 others* [2013] eKLR the court of Appeal had this to say: “The law as regards the Applications for stay of Execution, stay of proceedings or injunction is now well settled. The Applicant who will succeed upon such an Application must persuade the court on 2 limbs, which are first, his appeal or intended appeal is arguable, that is to say, it is not frivolous. Secondly that if the Application is not granted, the success of the Appeal, were it to succeed would be rendered nugatory. These two limbs must both be demonstrated and it would not be enough that only one is demonstrated.”
5. From the supporting affidavit, the applicant’s intend to challenge the court’s finding on the relationship of the deceased to some of the persons listed as dependants including his co – Administrator and which the court approved. I consider the issue arguable. As it has been stated in my decisions, the Appeal need not be one that will necessarily succeed, it only needs to be one that is not frivolous.



6. On substantial loss, the Applicant has contended that unless stay is granted, the Respondent is likely to obtain the confirmation of Grant and proceed with the distribution of the Estate rendering the intended Appeal nugatory. I am satisfied that proceedings with confirmation and eventual distribution would indeed affect the purpose of the intended appeal.
7. Judgment was delivered on 13th May 2022 and the present Application was filed in October 2022, a delay of about 5 months. There has been some delay but the same is not inordinate.
8. I have noted that the Applicant has begun the process of appeal as a Notice of Appeal has been lodged.
9. The application is merited. Consequently, I make the following orders.
 - a. The proceedings in this cause are hereby stayed, pending the hearing and determination of the intended appeal.
 - b. I make no orders as to costs

DATED SIGNED AND DELIVERED AT KAKAMEGA THIS 19TH DAY OF APRIL, 2023

S. CHIRCHIR

JUDGE

In the presence of:

Court Assistant; - Erick

Repha for the Appellant

N/A for the Respondent

