



REPUBLIC OF KENYA



**In re Estate of Amos Kiteria Madeda (Deceased) (Probate & Administration  
004 of 2021) [2023] KEHC 23218 (KLR) (5 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 23218 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
PROBATE & ADMINISTRATION 004 OF 2021  
GMA DULU, J  
OCTOBER 5, 2023**

**BETWEEN**

**GIBSON NYANGE KITERIA ..... 1<sup>ST</sup> APPLICANT**

**REGINA MANGA MNYAMBO ..... 2<sup>ND</sup> APPLICANT**

**AND**

**PHILEMON MADEDA KITERIA ..... RESPONDENT**

**RULING**

1. In a ruling by this court delivered on September 21, 2022, this court concluded as follows:-

“51. From my analysis of the issues discussed earlier, I find and hold that there is nothing before me to suggest that the respondent withheld crucial material from the court or obtained the grant by misrepresentation of facts. The upshot is that the applicants have failed to establish any of the grounds stipulated under section 76 of the Act. Accordingly, I dismiss the Summons for Revocation of Grant dated June 7, 2021 with costs to the respondent. Right of appeal 30 days.”

2. The losing parties in the above ruling have now come again to this court with the present application dated March 15, 2023, which is a notice of motion seeking the following orders:-

1. (Spent).

2. (Spent).

3. That the court be pleased to grant the following orders pending the hearing and determination of the appeal filed herewith.

a. An order of stay of execution of the ruling delivered on 21.9.2022 and all proceedings, awards and any other consequential orders emanating from upon the said ruling.



- b. A temporary order of injunction restraining the respondent, whether by himself, his agents, servants or employees from executing and/or acquiring any benefit by virtue of the ruling and decree delivered by Hon. Justice John Mativo on 21<sup>st</sup> September 2022, against the applicants in any manner whatsoever whether directly or indirectly in particular interfering/trespassing or planting/harvesting crops on the portion of property Werugha/Werugha/335 that used to be occupied by the applicants/appellants.
4. In the alternative there be an order of maintenance of the status quo pending the hearing and determination of this application and pending the hearing and determination of the appeal herewith.
5. That this court does give such consequential further or other orders as it may deem fit.
6. The costs of this application be provided for.
3. The application has grounds on the face of the notice of motion and was filed with a supporting affidavit sworn by Gibson Nyange Kiteria on March 15, 2023 and annexes a copy of the ruling of September 21, 2022, a Notice of Appeal to the Court of Appeal filed at the High Court in Voi is dated September 26, 2022 and the intended Memorandum of Appeal.
4. The application is opposed through a replying affidavit sworn on April 4, 2023 by Philemon Madeda Kiteria, to which the applicant filed a supplementary affidavit sworn on May 8, 2023 by Gibson Nyange Kiteria.
5. The application was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by Rajab & Mbogo Advocates for the applicants, as well as the submissions filed by Christine Munasye & Associates Advocates for the respondents. Both sides relied on decided court cases.
6. This is an application for stay of execution of courts orders pending appeal, as well as an application for temporary injunction orders pending appeal.
7. Having considered documents or pleadings filed as well as the submissions of the parties counsel, my view is that this application cannot succeed and is for dismissal.
8. With regard to the prayer for stay of execution, courts have consistently held that courts cannot possibly stay execution of negative orders, as there is nothing to be stayed in that regard.
9. In this present case, it is clear that the applicants have not applied for stay of any positive orders of the court, but for stay of the negative court orders in the ruling I have highlighted above dismissing their application. As such, the reasoning in the case of *Omboga =Versus= Austine Pyan Maranga – Kisii* HCCA No. 15 of 2010, and several other consistent decisions apply in this matter. I decline to grant the stay of execution orders sought herein.
10. Coming now to the prayers for temporary injunction, again since the ruling sought to be stayed, and appealed from, is of negative nature – in my view the applicants have not or are not likely to satisfy the requirements for grant of interlocutory injunctive orders, as restated in the case of *Giella =Versus= Cassman Brown & Company Ltd* (1973) EA 358. In particular it is not possible for them to show that they will suffer substantial loss by staying the particular ruling, though they might suffer loss due to another ruling or decision.
11. I thus find this application to be unmerited. I dismiss the application, with costs to the respondent.

**DATED, SIGNED AND DELIVERED THIS 5<sup>TH</sup> DAY OF OCTOBER 2023 VIRTUALLY IN OPEN COURT AT VOI.**



**GEORGE DULU**  
**JUDGE**

