



REPUBLIC OF KENYA



**In re Estate of Richard Ochana (Deceased) (Succession Cause
E002 of 2023) [2024] KEHC 15538 (KLR) (6 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15538 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
SUCCESSION CAUSE E002 OF 2023**

WM MUSYOKA, J

DECEMBER 6, 2024

IN THE MATTER OF THE ESTATE OF RICHARD OCHANA (DECEASED)

RULING

1. I delivered a ruling herein, on 27th May 2024, dated 2nd February 2024, which had sought cancellation of certain titles, injunctions, and an order to access certain bank accounts. I dismissed the application, upon finding that the deceased had been survived by 6 children, and the applicant herein, was not one of them, yet he had obtained representation to the estate without involving 5 of those children. I found that the applicant did not have prior right to administration of the estate, and I revoked his grant, suo moto, and was to appoint fresh administrators.
2. The applicant has come back to court. His application is dated 2nd August 2024, and he seeks stay of proceedings herein, pending the hearing and determination of his appeal, which he says has arguable grounds, and evinces that he and others would suffer substantial loss, should stay not be granted.
3. The respondent filed grounds of opposition, dated 24th September 2024. He avers that there was no substantial order made on 1st November 2023 capable of being stayed, no substantial order has been made so far capable of implementation to provide basis for claim of possibility of substantial loss, no evidence that an appeal has been filed, no basis has been laid for grant of the orders sought, and the application is filed in abuse of court.
4. The application was argued orally, before me, on 17th October 2024. The applicant argued that he had filed a notice of appeal, at the Court of Appeal at Kisumu. He said his appeal was [CA No. 226 of 2024](#), and that there was an application before the Court of Appeal, for leave to file record of appeal, out of time. Mr. Okeyo, the Advocate for the respondent, did not concede to the application, on grounds that no appeal had been filed, and no substantive orders had been made on 1st November 2023. He prayed for costs, arguing that the appellant was a vexatious litigant.
5. The principles on stay of proceedings were recently restated by a bench of 5, in *William Odhiambo Ramogi & 2 others vs. The Attorney General & 3 others* [2019] eKLR (Achode, J. Ngugi, Nyamweya, Ogola & Mrima, JJ), summarised from earlier pronouncements on the same by the superior courts. 6 principles were identified. There must be an appeal pending at a higher court, the applicant



should explain why stay was not sought at the higher court where the appeal is pending, it must be demonstrated that the appeal raises substantial questions to be determined or is otherwise arguable, it must be demonstrated that the appeal would be rendered nugatory should stay of proceedings be not granted, exceptional circumstances must be demonstrated as to why the proceedings should be stayed instead of all the issues being argued before the appellate court in the appeal, and the stay application should have been filed expeditiously and without delay.

6. Has the applicant met the test, set in *William Odhiambo Ramogi & 2 others vs. The Attorney General & 3 others* [2019] eKLR (Achode, J. Ngugi, Nyamweya, Ogola & Mrima, JJ)? I doubt it. He has not placed any document as evidence, on this record, that he did indeed file an appeal at the Court of Appeal. He only stated orally, while arguing his application, that the appeal case number was 226 of 224. He talked of filing a notice of appeal at the Court of Appeal, but that notice was not exhibited. He talked of having filed some application at that court, yet a copy of that application was not availed. Although he claims to have had filed an appeal at the Court of Appeal, he did not seek to explain why he has not sought stay of these proceeding in his appeal at the Court of Appeal. the applicant did not demonstrate that his alleged appeal raises substantial questions for determination by the Court of Appeal. None were raised in his application, none were argued when he urged the application, and the memorandum of appeal which he filed at the Court of Appeal, if at all, and which would have his grounds of appeal, was not placed before me. He did not attempt to demonstrate that his appeal would be rendered nugatory, should stay not be granted. He did not attempt to demonstrate that exceptional circumstances existed, which would warrant grant of stay of proceedings, instead of having all the issues canvassed and determined at the higher court. He did not attempt to demonstrate that his appeal was filed with expedition, and without delay.
7. As the applicant did not meet any of the principles set in *William Odhiambo Ramogi & 2 others vs. The Attorney General & 3 others* [2019] eKLR (Achode, J. Ngugi, Nyamweya, Ogola & Mrima, JJ), there would be no merit in his application, dated 2nd August 2024, and I hereby dismiss it. Mr. Okeyo asked me to award costs to the respondent, should I dismiss the application. I shall refrain from doing so. Firstly, because these remain succession proceedings, and the parties are family members. Secondly, because the applicant has a right of appeal, and is entitled to obtain the second opinion of a higher and expanded bench. This matter shall be mentioned on 18th November 2024, for further directions. Orders accordingly.

DELIVERED VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA THIS 6TH DAY OF DECEMBER 2024.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Ms. Eva Adhiambo, Legal Researcher.

Mr. Moses Emongole, the applicant, in person.

Advocates

Mr. Maxwell Okeyo, instructed by Okeyo Ochiel & Company, Advocates for the respondents.

