



REPUBLIC OF KENYA



**In re Estate of Mwangi Kimanga (Deceased) (Succession Cause 1728 of 2000)
[2024] KEHC 15431 (KLR) (Family) (5 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15431 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 1728 OF 2000
HK CHEMITEI, J
DECEMBER 5, 2024**

BETWEEN

**ALICE WANJIKU MWANGI 1ST APPLICANT
MARY WAITHERA KIMANGA 2ND APPLICANT
JANE WAMAITHA KIMANGA 3RD APPLICANT**

AND

**PRISCAH WANJIKU KIMANGA 1ST RESPONDENT
STEPHEN MAINA KIMANGA 2ND RESPONDENT**

AND

GERALD IRUNGU & ALICE WANJIRU INTERESTED PARTY

RULING

1. This ruling relates to the applications dated 29th May, 2023 and 6th February, 2024 filed by Jonathan Omangi and Stephen Maina Kimanga. The application dated 29th May 2023 is seeking for orders that:
 - (a) Spent.
 - (b) Stay of execution of the ruling herein delivered on 16th May, 2023 or any orders emanating thereof be granted pending hearing and determination of this application.
 - (c) Stay of execution of the ruling herein delivered on 16th May, 2023 or any orders emanating thereof be granted pending hearing and determination of the reference dated 29th May, 2023.
2. The application is supported by affidavits sworn by Jonathan Omangi and Stephen Maina Kimanga on 29th May, 2023 and further affidavit sworn by Stephen Kimanga on 16th June 2023.



3. The application dated 6th February 2024 on the other hand though differently dated but more or less is asking similar orders namely:-
 - (a) That directions be issued on determination of the Respondent's reference dated 29th May 2023.
 - (b) That there be a stay of proceedings till the reference is determined as rival submissions have already been filed.
4. The supporting affidavits of Jonathan Omangi and Stephen Maina Kimanga dated the same date speak as much. They aver inter alia that Jonathan Omangi, counsel on record on behalf of the Respondents/Applicants, forgot to ask for stay of execution when the ruling of 16th May, 2023 was delivered awarding costs of Kshs. 40,129,466/= and to which he has filed a reference. There is an apprehension that the Applicants/ Respondents will proceed to execution having obtained a certificate of taxation.
5. That the Applicants/Respondents will suffer no prejudice if the prayers sought are granted. The valuation report submitted by Tuliflocks Limited and dated 2nd November, 2021 is speculative and relies on information submitted by opposing counsel without back up of searches, copies of title to confirm sizes and ownership and the properties specific locations and non from the deceased's estate was called upon to specify their location.
6. Further that the deceased did not solely own, and was a shareholder in, the following properties: Miraho Estate, Fig Tree Hotel, Mwea Trading House, New Kiona Limited, Terrace Hotels and Kirima Bus Services Limited. Item 5 of the bill is indicated to have been sold but still valued at Kshs. 30 billion. The Kshs. 200, 000/= paid to the valuer is unjustified because he did not conform to valuation standards and succession P & A No. 1445 of 2020 is still ongoing.
7. By the replying affidavit on behalf of the Respondents by Wangalwa Oundo advocate sworn on 13th February 2024 the Respondent strongly opposed the applications on the grounds that the applicant has delayed the determination of the reference by filing various applications including the current ones and they cannot benefit from the orders of stay they are seeking.
8. That granting the application amounts to this court rehearing the matter again for stay of execution.
9. The Applicants have not filed written submissions in support of the application dated 29th May, 2023 seeking stay of execution of the ruling delivered on 16th May, 2023. The Respondents have filed written submissions dated 25th July, 2023, opposing this application.

Analysis And Determination

10. I have perused these applications and the lengthy history of the matter herein. The issue which ought to be settled once and for all is the decisions of the taxing master dated 16th May 2023. That reference is pending before this court.
11. I do not see any reason why the same should not be determined. The amount taxed of Kshs 40,129,466 is not pocket change.
12. I think to the extent that this issue revolves around the estate of the late Mwangi Kimanga and not an individual, it is necessary that opportunities be granted to every interested party.
13. More importantly is the reference which will impact on the deceased estate. Should the reference succeed for instance is the question of who will foot that bill? Is it the estate or the administrators or the beneficiaries?



14. I do not find any prejudice to be suffered by any of the parties if a stay is granted for the simple reason that the main cause is yet to be heard and determined.
15. In my earlier ruling dated 27th June 2024 I directed that
 - “(a) The reference pending herein be prosecuted forthwith and any results of the said reference shall await the determination of succession cause no E1445 of 2020.
 - (b) This file be consolidated with file number E1445 of 2020.”
16. In view of the said ruling which is still subsisting to date and in view of the above observations I do not find any reason to disallow the applications for stay pending the reference. In any case once the reference is determined, hopefully in favour of the Respondent, then and unless otherwise directed by the court it has to await the outcome of the decision in case No. E1445 of 2020.
17. Put differently, it has to form part of the debt in my view of the estate. In effect therefore it is necessary that a decision be made in regard to the reference contemporaneously as the parties move to determine case No. E1445 of 2020.
18. I think I have stated much to show that the two applications succeed and I direct that:-
 - (a) The pending Reference herein be determined forthwith.
 - (b) Pending the hearing and determination of the same there be stay of execution against the Applicants and or the estate herein.
 - (c) The outcome of the Reference shall await the determination of case No. E1445 of 2020.
 - (d) Costs shall be in the cause.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 5TH DAY OF DECEMBER 2024.

H K CHEMITEI

JUDGE

