



**Gimnyigei & another v Chumba (Succession Cause E065 of 2021 & E006 of 2022 (Consolidated)) [2025] KEHC 13934 (KLR) (6 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13934 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE E065 OF 2021 & E006 OF 2022 (CONSOLIDATED)  
RN NYAKUNDI, J  
OCTOBER 6, 2025**

**BETWEEN**

**JULIA GIMNYIGEI ..... 1<sup>ST</sup> PETITIONER**

**ESTHER GIMNYIGEI ..... 2<sup>ND</sup> PETITIONER**

**AND**

**GRACE JEPTUM CHUMBA ..... RESPONDENT**

**RULING**

1. This matter returns before the court following a directive from the Environment and Land Court, which clearly revealed the complexities arising when succession disputes intersect with contested land ownership. Having dismissed the Petitioners' revocation application on 11<sup>th</sup> October 2024 with a finding that title disputes fall outside this court's probate jurisdiction, the court in its obita directed the parties toward the Environment and Land Court for resolution of the underlying ownership question. The Petitioners complied by instituting Eldoret ELC Case No. E064 of 2024, only to have the session judge refer the matter back to this division with directions that the succession court determine whether the disputed assets can properly be subjected to distribution
2. What is pending before this court for determination is petitioners' summons dated 30<sup>th</sup> July, 2025 in which they seek orders as follows:
  - a. Spent
  - b. Pending the hearing and determination of this application, this Honourable court be pleased to issue a temporary stay of confirmation and/or distribution of the estate property known as Eldoret Municipality Block 24 (Kipkenyo) Nos. 2268, 2269, 2271, 2354, 2355 and 2373, and any other resultant titles derived from the mother title Eldoret Municipality Block 24 (Kipkenyo) No. 88.



- c. That this Honourable court be pleased to issue an order staying all dealings, alienations, subdivisions, or transactions relating to Eldoret Municipality 24 (Kipkenyo) No. 88 or its resultant titles pending the full hearing and determination of the question of ownership arising from alleged fraudulent transfer.
  - d. That the Director of Criminal Investigations (DCI) be directed to furnish this Honourable Court with a comprehensive report of their investigations regarding the alleged fraudulent transfer, having already testified but not submitted the said report.
  - e. That the costs of this application be provided for.
3. The application is anchored on grounds that:
- a. The applicant filed ELC NO. E064 of 2024 (Julia Gimnyigei v. Grace Jebet Saina & David Kimeli Leting) in the Environment and Land Court, challenging the ownership of the property, but the Honourable Court (Hon. Justice Washe) referred the matter to the family division of the High Court for determination of whether the said assets can properly be subjected to distribution within a succession cause.
  - b. That the applicant is contesting the ownership of the said properties, and yet there exists a confirmed Grant and a pending distribution schedule thus raising serious risk of transmission and alienation to third parties.
  - c. That should the said land be found not to have been lawfully owned by the deceased Alfred Kipkorir Gimnyigei, any subsequent transmission would amount to gross injustice and prejudice to the applicants, as the titles may already be in the hands of third parties.
4. In response to the application, David Kimeli Leting swore a replying affidavit stating as follows:
- a. That I am one of the petitioners and administrators to the estate of Alfred Kipkorir Gimnyigei and I am competent to swear this affidavit.
  - b. That the applicants are pursuing a claim to the estate of Alfred Kipkorir Gimnyigei allegedly because the parcel of land was held in trust by the deceased Alfred Kipkorir Gimnyigei on their behalf and on behalf of Alfred Kipkorir.
  - c. That the applicants are seeking cancellation of the title deed issued way back in 1996 to the deceased Alfred Kipkorir Gimnyigei.
  - d. That the Honourable court has already heard the objection of the applicants and pronounced itself in its decision made on 11<sup>th</sup> October, 2024.
  - e. That the honourable court has already pronounced itself that it lacks jurisdiction to deal with issues of title to land.
  - f. That the honourable court has already found that the issues of title to land ought to be litigated in the Environment and Land Court.
  - g. That if the applicants were aggrieved with the decision of the honourable court they ought to have pursued an appeal from the decision of the honourable court made on 11<sup>th</sup> October, 2024.
  - h. That the applicants were not aggrieved with the honourable court's decision hence there is no appeal therefrom.



- i. That the honourable court having pronounced itself left it open to the applicants to pursue a suit in the Environment and Land Court and the applicants seized the opportunity and filed Eldoret ELC case No. E064 of 2024.
- j. That the Environment and Land court has in turn directed that the dispute over the cancellation of title to land filed in the Environment Court in ELC No. E064 of 2024 be handled by the honourable court.
- k. That the applicants have not expressed any grievance with the decision of the Environment and Land Court on the directions or orders it gave on 17/7/2025 by appealing or seeking review.
- l. That no appeal nor review has been sought in the Environment and Land Court nor in this Honourable Court.
- m. That the only route open to the application is to pursue an appeal.
- n. That the Honourable court is functus officio and no further steps can be taken herein the honourable court having determined that it lacks jurisdiction to handle the dispute which is challenging title to land.
- o. That the only time the honourable court will be vested with jurisdiction is if the Environment and Land Court found that the parcel of land, land reference Eldoret Municipality Block 24 (Kipkenyo) 88 was not procedurally and legally acquired by the deceased Alfred Kipkorir Gimnyigei.
- p. That the honourable court is being asked to find that it has jurisdiction to deal with the dispute simply because the Environment and Land Court has determined that the dispute be dealt with in the succession cause contrary to this honourable court's decision to the effect that it is divested of jurisdiction. The honourable court's decision can only be reversed by a decision of a superior court not a court of concurrent jurisdiction.
- q. That the applicant cannot be heard to lament the decision of the Environment and Land court before this honourable court.
- r. That the petitioners are not pursuing enforcement of the decision of the Environment and Land Court but the decision of this honourable court contained in the Certificate of confirmation of Grant of Letters of administration issued on 26<sup>th</sup> January, 2023 which has in anyway been enforce.
- s. That investigators cannot be sought after the honourable court has rendered its decision dated 11<sup>th</sup> October, 2024.
- t. That the investigating officer was one of the witnesses in this matter and he tendered evidence on the status of investigations.
- u. That I have been advised by my counsel Mr. Momanyi that issues relating to title to land are the preserve of the Environment and Land Court or the Magistrate's court not the High Court.
- v. That this honourable court was aware of the distribution of the estate when it pronounced itself on its jurisdiction to handle the dispute.
- w. That the honourable court cannot be asked to revisit and reverse its decision on whether or not it has jurisdiction to deal with a dispute relating to title to land.



- x. That the deceased Hannah Jebii Tum was not the owner of LR Eldoret Municipality Block 24 (Kipkenyo) 88 effective 5<sup>th</sup> August, 1996 when the parcel of land was transferred to Alfred Kipkori Gimnyigei.
- y. That this Honourable court cannot stay execution of the confirmation of Grant of letters of administration after the same has already been executed as demonstrated by the fact that land reference number Eldoret Municipality Block 24 (Kipkenyo) 88 ceased to exist in February 2023.
- z. That this honourable court did not refer the succession cause to the Environment and Land Court. It only pronounced itself to the effect that it lacked jurisdiction to deal with a dispute in which the title to land was in dispute since the same fell within the Environment and Land Court's jurisdiction.
- aa. That there is nothing to stay and the application has been made too late in the day. The Objection having been determined the matter is closed and it cannot be determined a second time.
- ab. That the crucial issue herein is whether or not the honourable court can reopen and rehear the objection proceedings after the same has been determined.

### **Analysis and determination**

5. The central question before this court is whether it retains jurisdiction to entertain the present application following the ruling of 11<sup>th</sup> October 2024, and if so, whether the circumstances warrant the grant of interim relief sought by the Petitioners.
6. At the outset, it is necessary to clarify the procedural nature of what the Petitioners seek. Although framed as an application for interim orders pending determination of ownership disputes, the relief requested effectively asks this court to stay the execution and implementation of the Certificate of Confirmation of Grant issued on 26<sup>th</sup> January 2023. The Petitioners seek to freeze not merely future distributions, but to arrest the consequences of a grant that has, by the Respondents' account, already been substantially executed through the subdivision of the mother parcel in February 2023 and subsequent transmissions to beneficiaries.
7. In an application for stay of execution, an applicant must satisfy the provisions of Order 42 Rule 1 and 2 of the *Civil Procedure Rules*.
8. Order 42 Rule 6 (2) provides that: -
  - “No order for stay of execution shall be made under subrule (1) unless-
    - a. The court is satisfied that substantial loss may result to the Applicant unless the order is made and that the application has been made without unreasonable delay;
    - b. Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the Applicant.”
9. The jurisprudence interpreting these provisions establishes that for the court to order a stay of execution, four essential elements must be demonstrated: first, sufficient cause for the grant of stay; second, proof that substantial loss will result to the applicant if stay is not granted; third, absence of unreasonable delay in making the application; and fourth, provision of adequate security. The



court's consideration of these factors was articulated in *Stephen Wanjiku v Central Glass Industries Ltd* [Nairobi HCC No. 6726 of 1991], which established this four-fold test as the framework for evaluating stay applications. The court held that: -

“For the court to order a stay of execution there must be;

- i. Sufficient cause;
- ii. Substantial loss;
- iii. No unreasonable delay;
- iv. Security and the grant of stay is discretionary.”

10. I am equally guided by the case of *Butt v Rent Restriction Tribunal* (1982) KLR 417 where the court held that: -

- “1. The power of the court to grant or refuse an application of stay of execution is a discretionary power. The discretion should be exercised in such a way as not to prevent an appeal.
2. The general principle in granting or refusing a stay is, if there is no other overwhelming hindrance, stay must be granted so that an appeal may not be rendered nugatory should that appeal court reverse the Judge's discretion.
3. The court in exercise of its discretion whether to grant or refuse an application for stay will consider the special circumstances of the case and unique requirements

11. Before this court can meaningfully apply the stay of execution framework, it must confront the Respondents' threshold objection that this court is *functus officio* and therefore lacks jurisdiction to entertain the present application at all. The doctrine of *functus officio* serves important objectives in the administration of justice: it promotes finality in litigation, prevents parties from relitigating settled matters, protects successful litigants from being subjected to perpetual uncertainty, and maintains public confidence in the judicial process by ensuring that court decisions are treated as authoritative and binding.

12. The doctrine was comprehensively examined by the Court of Appeal in *Telkom Kenya limited v John Ochanda (suing on his own behalf and on behalf of 996 former employees of Telkom Kenya limited)* [2014] eKLR, where the court held that -

“*Functus officio* is an enduring principle of law that prevents the re-opening of a matter before a court that rendered the final decision thereon.”

13. The court in the *Telkom Kenya limited v John Ochanda* case went ahead to observe as follows:

“*Functus officio* is an enduring principle of law that prevents the re-opening of a matter before a court that rendered the final decision thereon--

The general rule that final decision of a court cannot be re-opened derives from the decision of the English Court of Appeal in *re-St Nazaire Co*, (1879), 12 Ch. D 88. The basis for it was that the power to rehear was transferred by the Judicature Acts of the appellate division.



The rule applied only after the formal judgment had been drawn up, issued and entered, and was subject to two exceptions. ---”

14. The exceptions to *functus officio* recognized in jurisprudence are well-defined. A court may clarify ambiguities in its orders, correct clerical or arithmetic errors that do not affect the substance of the judgment, or address matters arising from wholly unforeseen circumstances that could not have been contemplated when the original order was made and which fundamentally alter the basis upon which the court acted. The burden rests upon the party seeking to invoke an exception to demonstrate clearly that the circumstances fall within one of these limited categories. Without such demonstration, the principle of finality must prevail.
15. It is important to clarify what this court actually decided on 11<sup>th</sup> October 2024. The ratio decidendi was that the Petitioners had failed to prove fraud to the requisite standard and that the indefeasibility of registered title precluded this court from setting aside the title registered in Alfred Kipkorir Gimnyigei's name without a determination by the Environment and Land Court that the registration was procured through fraud or illegality. The court's observations about where land title disputes should be litigated constituted guidance rather than a formal reference or directive binding upon the parties. The Petitioners did act upon that guidance by filing ELC Case No. E064 of 2024. However, the fact that the Land Court formed a different view of the jurisdictional allocation does not retrospectively transform this court's guidance into error requiring correction. The October 2024 ruling was premised on well-established constitutional principles regarding the exclusive jurisdiction of the Environment and Land Court over land matters pursuant to Article 162(2)(b). Those principles remain valid regardless of whether a particular Land Court judge, confronted with the same dispute, might assess the jurisdictional boundaries differently.
16. The Petitioners' request that the Director of Criminal Investigations be directed to furnish a comprehensive report of investigations into the alleged fraudulent transfer presents a separate question. The DCIO testified before this court but did not submit a written report. The Petitioners argue that production of this report might shed light on whether the 1996 transfer was indeed fraudulent. While the court acknowledges that police investigations may contain relevant information, this request suffers from several difficulties. The DCIO already testified and was subject to cross-examination. The parties had the opportunity to probe the status and findings of the investigation through oral testimony. Criminal investigations are conducted for purposes of potential prosecution and are not primarily intended to serve as evidence-gathering mechanisms for civil litigation. Compelling production of the report at this stage, after a determination has been rendered would serve no immediate purpose. Ordering production now, when this court has already determined that it lacks jurisdiction to adjudicate the underlying ownership dispute, would be an exercise in futility.
17. In considering whether this is a matter stay of execution ought to be granted against the certificate of confirmation of grant this probate court has to bear in mind that for judicial discretion to be exercised there must be a real as opposed to fanciful prospect of success of the Applicants case. The test is not one of certainty and so the court is not required to form a view that the claim is bound to succeed or dismissed on appeal. The test requires that the court's attention is directed to the need to do an assessment of the Applicants case to determine its probable ultimate success of failure. However, I am not required nor I am expected to conduct a minitrial on the disputed facts regarding the subject matter which already have been determined by the Probate court. I have taken time to look down the road so to speak to see what was the determination made by this court on the emerging issues which have been agitated by the Applicants and as a matter of fact, the reference to ELC was an obiter dicta of the court. In so far as the probate court was concerned, the matter is *fait accompli*.



18. In so far as the probate court is concerned, the doctrine of re-judicata under Section 7 of the [Civil Procedure Act](#) does apply whatever differences there might be between the legal typologies litigated between the Applicants and the Respondents as to the transfer of the impugned parcel of land in question was delved into extensively as contextually stated in the ruling of this court. While it may correctly be pointed out, that there are marked jurisdictional distinctions between a probate court properly constituted under the [law of Succession Act](#) and Environment and Land Court the fundamental similarities between them lies in the fact that they operate to avoid re-litigation of a matter that will amount to an abuse of process. What is clear on the authorities relied upon by this court their purpose and effect is that by the time of conducting the trial there is no residual net estate for the court to exercise jurisdiction of identifying beneficiaries and available property capable of being distributed. There was therefore what we call the principle of cause of action estoppel. This means that this doctrine
19. arises where the cause of action in a later proceeding is identical to that in an earlier proceedings, the later having been between the same parties or the their privies and having involved the same subject matter, In such a case, I am of the view that for the Applicants to seek stay the bar is absolute in relation to all points decided by this court unless fraud or collusion is alleged such as to justify reviewing or setting aside the earlier judgement by this same court. The comparative dicta in [Garl Zeiss Stiftung v Rayner & Keeler Ltd](#) (No. 3) the court noted that to establish cause of action estoppel the party asserting estoppel must establish the following criteria: (1) That there has already been a judicial decision by a competent court or tribunal, (2) That decision was of a final character, (3) the decision relates to the same question as that sought to be put in issue by the plea in respect of which the estoppel is claimed and (4) the decision must have been between the same parties or their privies as the parties between whom the question is sought to be put in issue.
20. It is not competent for this court in the case of the same question arising between the same parties to review a previous decision under Section 80 of the [Civil Procedure Act](#) and Order 45 Rule 1 of the [Civil Procedure Rules](#) to create a cause of action which initially was not open to appeal. If the decision as wrong from this court it ought to have been appealed in due time although in the obiter dicta we had mentioned the recourse to the ELC forum without necessarily indicating that there was nothing wrong in the jurisdiction exercised by the probate court. In seeking to ascertain, wherein the merit lies in the arguments advanced by the Applicant seeking the remedy of stay, I am guided by the principles contained in [Halsbury's Laws of England](#) 4<sup>th</sup> Edition Vo, 16 paragraph 1527 that do decide that questions of law and fact were determined in the earlier judgement the court is entitled to look at the judge's reasons for his decision and his notes of evidence and is not restricted to the records. It went further to state that the parties are estopped by the findings of fact involved in the judgement and the facts must appear from the judgement as delivered to be the ground on which it was based
21. For the reasons set forth above, this court finds that the doctrines of re-judicata and estoppel applies to bar reconsideration of the jurisdictional determination made on 11<sup>th</sup> October 2024. There are several decisions of the High Court and Court of Appeal some of which have been cited elsewhere in this ruling. The general rule under Order 42 of the Civil Procedure Rules is for no stay as a successful litigant is entitled to the fruits of his or her judgement without limitation or fetter. It is therefor trite that there must be good reasons advanced for depriving or in essence enjoining a successive litigant from reaping the fruits of his or her judgement in his or her favour specifically after a full trial and the merits. Whether the court should exercise its discretion to grant a stay wholly depends on all the circumstances of the individual case and for this very application, I decline to exercise discretion in favour of the Applicants. “ The courts jurisdiction to grant a stay is based upon the principle that justice requires that the court should be able to take steps to ensure that its judgements are not rendered valueless. The essential question for the court is whether there is a risk of injustice to once or bother parties if it grants



or refused a stay. Further, the evidence in support of the application for stay of execution should be full, frank and dear. The normal rule is for no stay and if a court is to consider a stay, the applicant has to make out a case by evidence which shows special circumstances for granting one. The mere existence of arguable grounds of appeal is not by itself a good enough reason. (See the *National Newspapers Limited & Another v Fibi Munene*, Nairobi civil application number 19 of 2008.)

22. Applying the above principles to the circumstances of the instituted proceedings before this Probate Court and the ultimate decision the estate in question had already been transferred to the beneficiaries including creditors whose rights have crystallized within the provisions of the *Succession Act*. There are no fresh issues to be considered by the probate court in making the order being agitated by the Applicants. The application for special stay be and is hereby dismissed for there is no valid appeal from a decision of this court. The costs of this application be shared equally between the parties. Sequel to the foregoing given the analysis elsewhere in this ruling, any such intended application to this probate court are adjourned sine die. It is so ordered

**DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 6<sup>TH</sup> DAY OF OCTOBER 2025**

.....

**R. NYAKUNDI**

**JUDGE**

