



**Irungu v Kamau & 2 others (Family Appeal E006 of 2024)
[2025] KEHC 13959 (KLR) (7 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13959 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
FAMILY APPEAL E006 OF 2024
TW OUYA, J
OCTOBER 7, 2025**

BETWEEN

JANE WANJIKU IRUNGU APPLICANT

AND

KELVIN KARIUKI KAMAU 1ST RESPONDENT

LUCY NJERI KAMAU 2ND RESPONDENT

WAMBUI IRUNGU 3RD RESPONDENT

RULING

1. This ruling is in respect of the Notice of Motion dated 8th March, 2024. Prayer I of the Motion is now spent and what is now pending this court's determination are the following prayers:
 - i. That the honourable court be pleased to grant an order of stay of execution of the ruling and order issued by the court in Kigumo Succession cause no. 68 of 2008, specifically cancelling the applicant's title no. LOC.18/Kirehe/1665 pending the hearing and determination of this appeal; and
 - ii. That the honourable court be pleased to grant an order of stay and status quo for the applicant to remain in possession, occupation and cultivation of her parcel of land, title LOC.18/Kirehe/1665, pending the hearing and determination of this appeal.
2. The application is anchored on the grounds stated on the face of it and on the depositions made in the supporting affidavit sworn by the applicant, Jane Wanjiku Irungu, on the 8th of March, 2024. In brief, the applicant alleged that in the year 1994, she purchased a parcel of land from the then administrator of the deceased estate, one Joseph Kamau Muiruri. That following the hearing and determination of Kigumo Succession cause no. 68 of 2008, the court found that she was a bona fide purchaser for value



- and the said court distributed to her the portion of land that she had purchased from Joseph Muiruri, being land parcel Loc.18/Kirehe/1665 and the said parcel of land was registered in her name.
3. That she has been in exclusive possession of the said parcel of land for a period of over 25 years and no appeal or contest has ever been laid on her title to the said parcel of land. That her title to the land was cancelled by court in Kigumo, in a revocation cause that was filled and prosecuted irregularly. The applicant contended that following the ruling by the trial court, the respondents have issued her with a notice to vacate her parcel of land; and that her title to her parcel of land is about to be cancelled in execution hence this application.
 4. The applicant deposed that she has extensively developed her parcel of land, which she has occupied for a period of over 25 years; and the orders sought are most necessary and deserving in the circumstance, and no prejudice shall be occasioned to the respondents who have not set foot on the subject parcel for 25 years. she contended that she stands to suffer irreparably if evicted from the land and she stands to suffer immensely if the land is alienated in any way.
 5. The application was opposed by the respondents vide a replying affidavit sworn on the 26th of April, 2024, by Kelvin Kariuki Kamau, the 1st respondent on behalf of the respondents. In the affidavit, the respondents alleged that the application is unmerited, misconceived, and an abuse of this court's process, as it is meant to scuttle their inalienable rights to enjoy the fruits of the trial court's ruling. They contended that the application is fatally defective, as the applicant has not attached the ruling or order that they intend to appeal against.
 6. The respondents alleged that the applicant obtained land parcel Loc.18/Kirehe/1665, illegally in succession cause no. 68 of 2008, given that she was not a beneficiary of the estate of the late Muiruri Kamithi. That the suit land was sold to the applicant prior to the confirmation of grant which was illegal as per the provisions of section 55 and 82 of the [Law of Succession Act](#).
 7. The respondents further alleged that there was a succession cause filed in Murang'a PMCC no. 149 of 1997, over the suit premises, which was a clear indication that the purpose of filing the succession cause in Kigumo succession 68 of 2008 was fraudulent, and the trial court was right in indicating that it could not proceed to hear a matter that was evidently res judicata. It was the respondents' contention that the application was overtaken by events, as the orders of the trial court have already been effected and the said parcel of land has reverted to the estate of the late Muiruri Kamithi.
 8. The respondents alleged that the applicant has admitted to having intermeddled in the estate of the late Muiruri Kamithi, and she cannot therefore seek protection from the law due to her illegal actions. The respondents further alleged that the applicant has moved this court with an attempt to mislead the court to issue an order to stay the execution of the ruling of the trial court and no sufficient cause has been demonstrated on why the suit premises should not revert to the estate of the late Muiruri Kamithi.
 9. The respondents contended that the applicant cannot purport to have been a bona fide purchaser for value, yet she was aware that there was no confirmed grant. The respondents further contended that to allow the application would be repugnant to good practise and timely administration of justice, given that the application is devoid of merit as it does not conform to the requirements for stay of execution as envisaged by the Civil Procedure rules and the [Civil Procedure Act](#).
 10. The respondents averred that the applicant's right of appeal must be balanced against the respondents right to enjoy the fruits of the ruling delivered in their favour by the lower court, as such, there must be a just cause to deprive the respondents of that right. The respondents urged this court to strike out the application as the same has been overtaken by events and sufficient cause to grant the orders sought has not been shown.



11. At the hearing of the application which was canvassed orally before this court, the advocates representing both parties basically reiterated the position taken by their clients in their supporting and replying affidavits respectively.
12. I have duly considered the application the affidavits on record and the submissions made on behalf of the parties, having done so, I find that the key issue arising for determination is whether the application herein has merit.
13. The law governing stay of execution pending appeals is found in Order 42 rule 6 of the Civil Procedure rules. Order 42 rule 6 (1) of the Civil Procedure rules provides as follows:

“No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.”

14. On the other hand, Order 42 rule 6 (2) which provides for conditions to be fulfilled before a party is granted an order for stay of execution pending appeal, stipulates thus:

“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; and
- (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.”

15. It is trite that an order for stay of execution is a discretionary power which must be exercised on defined principles and facts. This position was restated by the court in the case of *Butt versus Rent Restriction Tribunal* (1982) KLR; as follows:

“If there is no other overwhelming hindrance, a stay ought to be granted so that an appeal, if successful, may not be nugatory. A stay which would otherwise be granted ought not to be refused because the judge considers that another, which in his opinion will be a better remedy, will become available to the applicant at the conclusion of the proceedings. It is in the discretion of the court to grant or refuse a stay but what has to be judged in every case is whether there are or not particular circumstances in the case to make an order staying execution. It has been said that the court as a general rule ought to exercise its best discretion in a way so as not to prevent the appeal, if successful from being nugatory, per Brett, LJ in *Wilson v Church* (No 2) 12 Ch D (1879) 454 at p 459. In the same case, Cotton LJ said at p 458: “I will state my opinion that when a party is appealing, exercising his undoubted right of appeal, this court ought to see that the appeal, if successful, is not nugatory.” Megarry J, as he then was, followed *Wilson* (supra) in *Erinford Properties Limited v Cheshire County Council* [1974] 2 All ER 448 at p 454 and also held that there was no inconsistency in granting such an injunction after dismissing the motion, for the purpose of the order is to prevent the Court of Appeal’s decision being rendered nugatory should that court reverse



the judge’s decision. The court will grant a stay where special circumstances of the case so require....”

16. The main objective of an order of stay of execution is to prevent substantial loss and to ensure that an appeal is not rendered nugatory before it is heard. This position was reiterated by the court in *James Wangalwa & Another versus Agnes Naliaka Cheseto* [2012] eKLR; where the court held as follows:

“The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the applicant as the successful party in the appeal ... the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.”

17. Suffice it to say, a stay of execution should only be granted where sufficient cause is shown. In *Antoine Ndiaye versus African Virtual University* (2015) eKLR; Gikonyo J opined as follows:

“stay of execution should only be granted where sufficient cause has been shown by the applicant. And in determining whether sufficient cause has been shown, the court should be guided by the three prerequisites provided under order 42 rule 6 of the Civil Procedure Rules.”

18. Having stated that, the applicant in this case has indicated to court that she has been in possession and occupation of the suit land, being land parcel LOC.18/Kirehe/1665 for over a period of 25 years. She has indicated that she has extensively developed the said parcel of land, and if the order of stay of execution is not granted she would be greatly prejudiced. The applicant in her application has attached photos of the developments that she has allegedly done on the said parcel of land.
19. I am of the considered view that the applicant has demonstrated substantial loss that would be occasioned to her should an order for stay of execution not be granted, considering also that there are uncontroverted claims by the applicant, that the respondents have issued her with a notice to vacate from the suit land.
20. It is also evident that the present application has been brought without unreasonable delay. The ruling of the trial court was delivered on the 19th of February, 2024, and the application was filed before court on 8th March, 2024, a period of less than one month. As regards security, being a succession matter, there is no need for provision of security by the applicant.
21. Based on the foregoing, it is clear that the applicant has demonstrated sufficient cause as to why her prayer for stay of execution should be granted by this court. The respondents have however stated that the application has been overtaken by events, as the suit land has already reverted back to the deceased estate. To prove their assertions, the respondents attached to their replying affidavit, a copy of a certificate of search, dated 19th March, 2024, which shows that the applicant’s parcel of land has already reverted back to the estate of the late Muiruri Kamithi.
22. From the copy of official search, it is evident that the suit land reverted back to the estate of the deceased on the 29th of February, 2024, before the applicant brought this application before court; as such, the prayer for stay of execution the applicant seeks in terms of prayer II of the Motion has been overtaken by events, and cannot be granted, as it would serve no useful purpose.
23. That being said, it is not lost on me that the applicant faces the risk of being evicted from the suit land, which she has been in possession and occupation of since 1994, a period of about 25 years. For the reasons stated herein above, I am of the considered view that it is necessary for status quo to be



maintained pending the hearing and determination of the appeal. I therefore grant prayer III of the application to the effect that the applicant shall remain in possession, occupation and cultivation of the portion of land she has been occupying pending the hearing and determination of the appeal.

24. The application partially succeeds in that an order of stay and status quo for the applicant to remain in possession, occupation and cultivation of her parcel of land, title LOC.18/Kirehe/1665, pending the hearing and determination of this appeal is hereby granted.

25. Each party shall bear their own costs.

DATED, SIGNED AND DELIVERED ELECTRONICALLY THIS 7TH DAY OF OCTOBER, 2025.

HON. T. W. OUYA

JUDGE

