



**Kajuju & another v M’Imanyara & another (Family Appeal  
E015 of 2023) [2025] KEHC 13561 (KLR) (1 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13561 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
FAMILY APPEAL E015 OF 2023  
SM GITHINJI, J  
OCTOBER 1, 2025**

**BETWEEN**

**LYDIA KAJUJU ..... 1<sup>ST</sup> APPELLANT**

**ALICE TIRINDI ..... 2<sup>ND</sup> APPELLANT**

**AND**

**LUCY NCABIRA M’IMANYARA ..... 1<sup>ST</sup> RESPONDENT**

**ESTHER GAITI NKANATA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. For determination is the Notice of Motion dated 20/12/2024 under Section 47 of the [Law of Succession Act](#) and Rules 49 and 73 of the Probate and Administration Rules, seeking that:
  1. Spent
  2. Spent
  3. This Honourable Court be pleased to issue a temporary order of stay of execution of orders issued on 12<sup>th</sup> July 2023 in Nkubu SPMSC No E059 of 2020 pending hearing of this application inter partes.
  4. This Honourable Court be pleased to issue a temporary order of status quo pending hearing and determination of the appeal.
  5. This Honourable Court be pleased to issue an order staying execution of orders issued on 12<sup>th</sup> July 2023 in Nkubu SPMSC No E059 pending hearing and determination of the appeal.
  6. The costs of this application be provided for.



2. The application is predicated on the grounds that the deceased herein had distributed L.R No. Nkuene/L-Mikumbune/61 to the Appellants' husbands, who settled thereon with their families. Unfortunately, their said husbands died before they could effect transfers and upon hearing of the protest, the trial court ordered them to cede 2.66 Acres to the Respondents herein. The Respondents are actively in the process of executing the orders which will occasion them monumental distress, unless the orders sought are granted.
3. The Respondents swore a replying affidavit on 17/2/2025 in opposition of the application. They denied the contention that the Appellants had occupied and/or extensively developed the land in dispute, and the application was a non-starter, vexatious, bad in law and frivolous. They prayed for the dismissal of the application with costs, so that they can enjoy the fruits of their judgment.
4. The application was canvassed by way of written submissions, which were only filed by counsel for the Respondents.

### **Determination**

5. Order 42 Rule 6 (2) of the Civil Procedure Rules provides as follows; "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."
6. The application was filed on 9/1/2025, while the impugning judgment was delivered on 12/7/2023. That delay of close to 2 years is manifestly inordinate and unreasonable. No effort has been made whatsoever to proffer any explanation for that delay.
7. The cornerstone consideration in every application for stay is substantial loss, and the burden of proof lies on the Applicant, as was held by the Court of Appeal in Kenya Shell Limited v Benjamin Karuga Kibiru & another [1986] KECA 94 (KLR) that; "It is usually a good rule to see if order XLI rule 4 of the Civil Procedure Rules can be substantiated. If there is no evidence of substantial loss to the applicant, it would be a rare case when an appeal would be rendered nugatory by some other event. Substantial loss in its various forms, is the corner stone of both jurisdictions for granting a stay. That is what has to be prevented. Therefore without this evidence it is difficult to see why the respondents should be kept out of their money."
8. The Appellants contend that the Respondents are in active process of execution, a contention the Respondents have strenuously refuted. The Respondents have deponed at paragraph 6 of their replying affidavit that; "Upon delivery of the judgment the petitioner has tried to access the land so as to bring a surveyor to subdivide according to the Court Order but the protestors/applicants have made it impossible to access the land."
9. How then can there be imminent danger of execution of the impugning judgment, when the Appellants have denied the Respondents access to the land in dispute?
10. I find that the Appellants have failed to establish what substantial loss they stand to suffer if the sought stay of execution is denied.
11. Accordingly, the application dated 20/12/2024 lacks merit and is hereby dismissed. Costs be in the cause.

**DATED AND DELIVERED AT MERU THIS 1<sup>ST</sup> OCTOBER, 2025**



**S.M. GITHINJI**

**JUDGE**

Appearances:-

Mr. Miriti for the Applicant (absent).

Ms. Riungu for the Respondents (absent).

