



In Re Estate of William Kiptoo Chepkonga (Deceased) (Family Appeal E003 of 2024) [2025] KEHC 15283 (KLR) (29 October 2025) (Ruling)

Neutral citation: [2025] KEHC 15283 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
FAMILY APPEAL E003 OF 2024
LN MUTENDE, J
OCTOBER 29, 2025**

IN THE MATTER OF THE ESTATE OF WILLIAM KIPTOO CHEPKONGA (DECEASED)

BETWEEN

NANCY TALAI KIPTOO 1ST APPELLANT

GEOFFREY KIPTOO 2ND APPELLANT

AND

MARGARET WARUGURU NDUNG’U 1ST RESPONDENT

LINA KABUN 2ND RESPONDENT

JAMES KIPRUTO KIPTOO 3RD RESPONDENT

RULING

1. William Kiptoo Chekonga died intestate on 16th February, 2020. Subsequently, the 1st Respondent, Margaret Waruguru Ndung’u instituted citation proceedings against Lina Kabun (2nd Respondent), James Kipruto Kiptoo (3rd Respondent), Nancy Talai Kiptoo (1st Applicant/Appellant) and Geoffrey Kiptoo (2nd Applicant/Appellant) surviving spouses/children (beneficiaries) of the deceased. The 1st Respondent brought the citation to accept or refuse letters of administration intestate in her capacity as a Creditor to the estate.
2. The Applicants herein stated to be from the 2nd house filed a Notice of Objection on points of law where it was argued that the 1st Respondent’s suit against the deceased was struck out in the *ELC Suit No. E47 of 2022* as being *res judicata* hence should have ventilated her concerns either through appeal or review. The Citation was vehemently opposed.
3. The 2nd and 3rd Respondents from the 1st house did not oppose the citation. They acknowledged the fact of the 1st Respondent (Citor) having purchased 3 acres of land from the deceased and annexed a copy of the sale agreement.



4. Additionally, the Applicants/Appellants filed a Notice of Motion dated 2nd June, 2023 raising an argument that the family court had no jurisdiction to delve into the matter as it was an ELC matter. Therefore, it could not be litigated upon.
5. The trial court considered the Preliminary Objection and the Notice of Motion of 2nd June, 2023 and dismissed them for lack of merit. In the result the Citees (Applicants/Appellants and 2nd and 3rd Respondents) were directed/compelled to petition for letters of Administration intestate within 45 days of the 9th September, 2024.
6. Aggrieved, the Applicants/Appellants filed a Memorandum of Appeal together with the instant Notice of Motion dated 6th December, 2024 seeking orders thus;
 1. Spent.
 2. Spent.
 3. That the honourable court be pleased to grant stay of execution of the ruling rendered on the 1st July, 2024 in the Chief Magistrate's Court at Nyahururu Nyahururu Citation Cause No. E005 of 2023; *Margaret Waruguru Ndung'u v Lina Kabun, James Kipruto, Nancy Talai Kiptoo & Geoffrey Kiptoo* and to specifically stay the petition and processing of the grant of letter of Administration to the estate of William Kiptoo Chepkonga (deceased) pending the hearing and determination of the appeal and/or until further orders.
 4. Spent.
 5. That the honourable court be pleased to grant stay of proceedings in the Chief Magistrate's Court at Nyahururu Nyahururu Citation Cause No. E005 of 2023; *Margaret Waruguru Ndung'u v Lina Kabun, James Kipruto, Nancy Talai Kiptoo & Geoffrey Kiptoo* and to specifically stay the petition and processing of the grant of letters of Administration to the estate of William Kiptoo Chepkonga (deceased) pending the hearing and determination of this application and/or until further orders.
 6. That the honourable court be pleased to grant stay of proceedings in the Chief Magistrate's Court at Nyahururu; Nyahururu Citation Cause No. E005 of 2023; *Margaret Waruguru Ndung'u v Lina Kabun, James Kipruto, Nancy Talai Kiptoo & Geoffrey Kiptoo* and to specifically stay the petition and processing of the grant of letters of Administration to the estate of William Kiptoo Chepkonga (deceased) pending the hearing and determination of the appeal and/or until further orders.
7. The application is premised on grounds that the Preliminary Objection and Motion dated the 2nd June, 2023 were dismissed for lack of merit therefore the Citees are compelled to petition for the grant of letters of Administration within 45 days. That the Applicants being dissatisfied have already lodged an appeal which raises arguable grounds.
8. That the 1st Respondent's claim revolves around her interest over 3 acres of land part of the Laikipia/Ol Arabel/194 therefore the proper forum to address the claim is the ELC Court pursuant to Section 13 of the *Environment and Land Court Act* and Article 162(2) of the *Constitution* of Kenya.
9. That the citation is a façade disguised as claim to land riddled with ulterior motive to circumvent the Limitation of Action Act and therefore nullity and improper before the probate court.
10. That the citation was brought by the 1st Respondent, an alleged creditor, who was neither a beneficiary nor in line in terms of consanguinity and or priority as posited in Section 66 of the *Law of Succession Act*.



11. That the dispute between the 1st Respondent and the deceased was adjudicated by the ELC Court which quashed the award made in her favour by the Land Dispute Tribunal.
12. In a response thereto the 1st Respondent urges that she filed the citation proceedings to trigger the process for letters of Administration intestate as she has been in occupation of the portion of land for over 25 years yet the persons entitled to apply (Citees) have without any justifiable cause refused to petition. That the court acted pursuant to the jurisdiction to determine citation proceedings hence there is nothing to warrant the order of stay of execution.
13. The 2nd and 3rd Respondents in opposing the application for stay of execution argue that the 1st Respondent approached the court in her capacity as a purchaser for value and therefore a Creditor to the estate of the deceased. Though not a dependent, she is a worthy Creditor.
14. That the Succession Cause should be filed to prevent delay and the estate being wasted. That the issue in court has never been ownership of land but transfer of title document and the fact of sale was never disputed by the deceased. And, to date the 1st Respondent is the beneficial owner of the three acres of land.
15. The application was disposed through written submissions that I have taken into consideration alongside supporting and opposing affidavits, annexures thereto and case law cited.
16. It is submitted by the Applicants/Appellants that the purpose of the application is stay of execution and stay of proceedings pending appeal so as to preserve the subject matter so that the appeal is not rendered nugatory.
17. It is however argued by the 1st Respondent that as required by the law the Applicants/Appellants are required to satisfy the well settled principles of granting stay of execution, but they have not demonstrated that they are likely to suffer substantial loss or if the appeal will be rendered nugatory for it is the estate of the deceased that will benefit once the Administrators are appointed and the delay in filing of the application is unexplained.
18. Principles for stay of execution is derived from the legal framework. To halt enforcement of a court order one must satisfy stated principles as provided in Order 46 Rule 6(1) and (2) of the [Civil Procedure Rules](#) that provide as follows;
 - (1) 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.
 - (2) No order for stay of execution shall be made under sub rule (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.



19. The court has the inherent power which is discretionary in granting stay of execution. It must however guard against abuse of the court process. Although, stay of execution helps maintain status quo pending the appeal instituted, caution must be taken to ensure that one of the parties is not unfairly disadvantaged. That is why reasons put forth seeking stay of proceedings or execution must be valid.
20. In *Visbram Ravji Halai & Another v Thornton & Turpin (1963) Limited* [1990] KLR 365 it was held that;
- “Superior court’s discretion is fettered by three conditions, firstly, the Applicant must establish a sufficient case. Secondly, the court must be satisfied that substantial loss would ensue from a refusal to grant a stay; and, thirdly, the Applicant must furnish security. The application must, of course be made without unreasonable delay.”
21. Substantial loss has been stated to be one that cannot be compensated by monetary consideration. In *Wangalwa & Another v Agnes Naliaka Chesoto* Misc. Appl. N0. 42 of 2011 [2012] eKLR it was held that;
- “No doubt, in law the fact that the process of execution has been put in motion or is likely to be put in motion, by itself does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold as is the case here does not in itself amount to substantial loss under Order 42 Rule 6 of the *CPR*. This is so because execution is a lawful process.
- The Applicant must establish other facts 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. This is what substantial loss would entail, a question that was aptly discussed in the case of *Silverstein v Chesoni* [2002] 1KLR 867 and also in the case of *Mukuma v Abuoga* quoted above. The last case referring to the exercise of discretion by the High Court and the Court of Appeal in the granting stay of execution under Order 42 of the *CPR* and Rule 5(2) (b) of the *Court of Appeal Rules* respectively. Emphasized the centrality of substantial loss thus:
- “the issue of substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.”
22. The Applicants do appreciate that in considering granting the orders sought the court must balance the interests of the Applicants with those of the Respondents. But, they argue that if stay is not granted, the Respondents will go ahead to petition for letters of Administration of the deceased’s estate with the risk of some parcel of land in the name of the deceased passing to a third party namely the 1st Respondent. That the 1st Respondent’s falls outside the framework of the *Law of Succession Act* and *Probate and Administration Rules* hence the claim ought to have crystalized before the ELC court before being entertained by the Family Court as a probate matter.
23. That if the succession matter proceeds, the Applicants will suffer substantial loss as the deceased’s estate will be distributed pending appeal.
24. The argument advanced by the Applicants/Appellants simply suggest that there is some apprehension of the likelihood of the 1st Respondent having the 3 acres of land hived out of the estate of the deceased after the ELC court pronouncing itself. The question is whether such harm can be irreversible to be termed substantial.



25. The Applicants, the 2nd and 3rd Respondents were asked by the 1st Respondent to take up duties related to the estate of the deceased, duties that were not obligatory. Failure to accept the citation in itself so as to protect due process for all parties who have interest in the estate cannot be stated to be substantial loss.
26. On the issue of the appeal being rendered futile. To buttress their argument the Applicants concentrated on the question of substantial loss. In fact, arguments put forth were in support of reasons why the 1st Respondent would seek remedy in the ELC Court. These are issues to be determined at the substantive appeal.
27. On the question of delay in filing of the application. The impugned ruling was delivered on 01/07/2025 and the instant application is dated 6th December, 2024 and filed on 16th December, 2024. What is notable is the Memorandum of Appeal having been filed on 24th July, 2025. However, the Applicants have not endeavored to explain why the application was not brought timeously.
28. The Applicants/Appellants submitted that the other condition is for security to be offered and that the law requires a party seeking stay to offer such security for the due performance of orders as may be ultimately binding on the Appellant but did not propose what was reasonable.
29. From the foregoing, it is apparent that the Applicants have failed to demonstrate that substantial loss shall ensue if orders sought are not granted. Apparently the application was not made promptly and the Applicants can be compensated in monetary damages in event that the appeal succeeds.
30. The upshot of the above is that the application is dismissed with costs to the 1st Respondent.
31. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 29TH DAY OF OCTOBER, 2025.

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L.N. MUTENDE

JUDGE

