



REPUBLIC OF KENYA



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**Mburu v Wanjiku & another (Environment and Land Case  
622 of 2015) [2025] KEELC 7246 (KLR) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7246 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE 622 OF 2015  
OA ANGOTE, J  
OCTOBER 23, 2025**

**BETWEEN**

**JOHN MAINA MBURU ..... DECREE HOLDER**

**AND**

**BETH WANJIKU ..... 1<sup>ST</sup> JUDGMENT DEBTOR**

**MARY WANJIRU KAGECHE, NANCY NYOKABI KAGECHE, ESTHER  
WANJA KAGECHE & SAMMY MURAYA KAGECHE [SUED AS  
ADMINISTRATORS OF THE ESTATE OF THE LATE EVANS BORO  
KAGECHE] ..... 2<sup>ND</sup> JUDGMENT DEBTOR**

**RULING**

1. Before this court for determination is the Motion dated the 25<sup>th</sup> February, 2025, brought pursuant to the provisions of Article 159(2)(d) of *the Constitution* of Kenya 2010, Sections 1A, and 1B of the *Civil Procedure Act* and Order 40 of the Civil Procedure Rules. The Applicants seek the following reliefs:
  - i. That there be an order that the taking out of execution proceedings against the estate of Evans Boro Kageche is premature and therefore null and void.
  - ii. That the Honourable court be pleased to grant an order for stay/and or stay of any other proceedings and/or process being taken out as a consequence or incidental to the judgment entered against the Defendants in this matter, until the beneficiaries of the estate of the Deceased, Evans Boro Kageche take out the letters of administration and until the same is confirmed.
  - iii. That costs of the application be provided for.
2. The Motion is based on the grounds on the face thereof and supported by the Affidavit of Nancy Nyokabi Kageche, one of the daughters of the 2<sup>nd</sup> Defendant/Judgment Debtor. She deponed that the



- Respondent/Decree Holder has proclaimed goods belonging to her, as well as Mary Wanjiru Kageche, Esther Wanja Kageche, and Sammy Muraya Kageche having cited them as administrators of the Estate of the 2<sup>nd</sup> Defendant/Judgment Debtor who is since deceased.
3. According to Ms Kageche, whereas judgment was indeed entered against the deceased 2<sup>nd</sup> Defendant, they are yet to be confirmed as the Administrators of his Estate and have not been joined into these proceedings and that no letters of administration have been taken out in respect of the Estate of Evans Kageche Boro and the execution proceedings are premature. She urged that the Motion has been brought without undue delay and the interests of justice warrant that it be allowed.
  4. In response, the Respondent/Decree Holder filed a Replying Affidavit on the 7<sup>th</sup> March, 2025. He deponed that judgment in this matter was delivered in his favour on 23<sup>rd</sup> February, 2023, and that following the judgment, he instructed auctioneers to commence execution proceedings and they proclaimed and attached the deceased's assets.
  5. According to Mr. Mburu, the attached assets belonged to the deceased and form part of his estate having been so cited in the Petition for Letters of Administration in Nakuru Succession Cause E088 of 2023-Estate of the Late Evans Kageche Boro. As such, he deposed, they remain liable for the judgment debt.
  6. It was his deposition that contrary to their assertions, the Applicants have been granted letters of administration in respect of the deceased's estate making them responsible for settling the liabilities of the estate including his Decree.
  7. The Decree Holder deposed that the proclaimed vehicles No KCA 216T, KCC 409R and KBA 661P are among the assets listed as belonging to the deceased. However, he contends, one of the vehicles is registered in the name of the Mary Wanjiru Kageche, a clear demonstration of intermeddling.
  8. As regards the proclaimed posho mill machine, dairy cows and machines, he avers that they are all located on I.R No 1331/2 registered in the names of Evans Kageche Boro. As advised by Counsel, he stated, they filed a Motion for substitution in accordance with Section 37 of the [Civil Procedure Act](#) and the same was allowed, and that the present Motion is a ploy to deceive the court and hinder him from benefiting from the judgment.
  9. He asserts that the Applicants have not offered security nor proposed any settlement plans further proving their lack of good faith; that no legitimate reasons have been given demonstrating why the decree should not be executed against the estate and that the decree and certificate of costs in this matter were issued on the 2<sup>nd</sup> October, 2024 and 23<sup>rd</sup> October, 2024. He urged that the interest of justice dictates that the Motion is dismissed.
  10. The Applicants filed a Supplementary Affidavit on 22<sup>nd</sup> May, 2025. Ms Kageche deponed that it is not in dispute that Evans Kageche is deceased and the properties alluded to by the Plaintiff are still registered in his name and that other properties not registered in the name of the deceased are still his properties.
  11. According to Ms Kageche, none of the properties alluded to by the Respondent have been transferred into the names of the beneficiaries; that the letters of administration referenced while issued, is yet to be confirmed and they cannot deal with the deceased's property and that the certificate of costs and decree is against the deceased and not them as administrators.
  12. She stated that the assertion that they have been joined in these proceedings is untrue. She urged that no action can be taken against them before their joinder into these proceedings.



13. The Applicants filed submissions on 25<sup>th</sup> May, 2025. Counsel submitted that whereas the 2<sup>nd</sup> Defendant herein is deceased and the properties alluded to by the Respondent are registered in the name of the deceased, letters of administration with respect to the property have yet to be confirmed and as such the execution proceedings are immature.
14. Further still, it was submitted, the Applicants are yet to be joined in the proceedings as parties and no action can be taken against them. It was urged that the contention that some of the deceased's properties have been registered in the names of any of the Applicants is untrue.
15. The Respondent filed submissions on 7<sup>th</sup> July, 2025. Counsel submitted that the Applicants have failed to demonstrate any legitimate cause why execution proceedings should be stayed having been duly issued with letters of administration on 20<sup>th</sup> November, 2023.
16. According to Counsel, Section 37(1) of the Civil Procedure Rules provides that where a judgment debtor dies before the decree has been fully satisfied, the decree holder may apply to the court which passed it to execute the same against the legal representative of such deceased, or against any person who has intermeddled with the estate of such deceased. Reliance in this regard was placed on the case of *Rutto vs Kugu Ketter*[2024] KEELC 4044 (KLR), *Mueni Kiamba vs Mbithi Kimeu Kimolo* [2017] eKLR and *Agnes Wanjiku Wang'ondy vs Uchumi Supermarket* [2008] eKLR.
17. According to Counsel, in the succession proceedings with respect to the deceased's estate, the vehicles KCA 216T, KCC 409R and KBA 661P are all registered in the name of the deceased. However, one of the vehicles has been registered in the name of Mary Wanjiru Kageche and her actions amount to intermeddling with the estate as the grant is yet to be confirmed.
18. It is asserted that the judgment has not been set aside and execution ought to proceed; that no sufficient reason has been given as to why stay of execution ought to be granted and that no proposal given by the Applicant's setting out how they intend to settle the decretal sum.

### **Analysis and Determination**

19. Having considered the Motion, responses and submissions, the sole issue for determination is whether the court should stay the on-going execution proceedings. Black's Law Dictionary, Ninth Edition, defines a proceeding as:

“(1) The regular and orderly progression of a law suit, including all acts and events between the time of commencement and the entry of judgment; (2) any procedural means of seeking redress from a tribunal or agency; (3) an act or step that is part of a larger action; (4) the business conducted by a Court or other official body, a hearing.”
20. The general principles which guide the court whenever it is invited to exercise jurisdiction to stay proceedings are best summarized in Halsbury's Law of England, 4th Edition, Vol 37 at pages 330 and 332 as follows:

“The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court's general practice is that a stay of proceedings should not be imposed unless the proceedings beyond all reasonable doubt ought not to be allowed to continue.”



21. Discussing this concept, the court in *Ferdinand Ndung'u Waititu vs Independent Electoral & Boundaries Commission (IEBC) & 8 others* [2013] eKLR persuasively stated thus:

“A stay of proceedings involves arresting or stopping proceedings. It is a tool used to suspend proceedings to await the action of one of the parties in regard to some step or some act (see *Black's Law Dictionary*). This implies that the rationale for stay is the pendency of an act or step either required by the court or sought by a party. It may be grounded on a statutory provision or on the need of a party and based on a plea for the plenary exercise of the court's discretion.”

22. Similarly, in the case of *Church Road Development Co. Ltd vs Barclays Bank of Kenya Ltd* (2007) eKLR, Ochieng, J held thus:

“*Black's Law Dictionary* defines ‘stay of proceedings in the manner following;

‘The temporary suspension of the regular order of proceedings in a cause, by direction or order of the Court, usually to await the action of one of the parties in regard to some omitted step or some act which the Court has required him to perform as incidental to the suit; as where a non-resident plaintiff has been ruled to give some security for costs. It is similar to an injunction with which a Court freezes its proceedings at a particular point. It can be used to stop the prosecution altogether, or to hold up some phase of it, such as an execution about to be levied on a judgment.’

Evidently, the scope of an order for stay of proceedings is wide as it is varied. It could relate to a specific action, such as taxation or execution; and it could also relate to the prosecution of the suit altogether.”

23. In the case of *Christopher Ndolo Mutuku and another Vs CFC Stanbic Ltd* (2015) e KLR, the court was categorical that an order for stay of proceedings should be granted only in rare and exceptional circumstances. It should not apply if the suspension of proceedings is anchored on frivolous and flimsy grounds intended to frustrate or delay the expeditious disposal of the case.

24. The court is so guided.

25. By way of brief background, the Respondent/Decree Holder instituted this suit against the Judgment Debtors jointly and severally seeking inter-alia, permanent injunctive orders restraining them from interfering with L.R 398/19, the suit property, eviction, mesne profits and general damages for trespass.

26. It was his case that despite having lawfully purchased the property, the Judgment Debtors who resided thereon refused to cede possession and their continual stay on the property caused him to suffer losses.

27. The two Judgment Debtors on their part maintained that they were lawfully on the property and in the event, there was any registration in favour of the Decree Holder, the same was fraudulent. The matter proceeded for hearing after which the court found in favour of the Decree Holder issuing the injunctive and eviction orders sought and awarding him Kshs 5,000,000 as damages for trespass.

28. Upon judgment, the Decree Holder filed a Party-Party Bill of Costs on 22<sup>nd</sup> May, 2023 and the same was taxed at Kshs 3,566,870. The Decree Holder thereafter filed a Notice to Show Cause why execution should not issue. On 14<sup>th</sup> November, 2024, the Deputy Registrar directed that the Notice to Show Cause be served upon the Administrators of the Estate of the deceased's 2<sup>nd</sup> Defendant. On the 10<sup>th</sup> December, 2024, it was directed that execution should issue.



29. It is the Applicants' contention that auctioneers have proclaimed their goods. They assert that this proclamation and the entire execution proceedings are premature as the letters of administration issued to them have yet to be confirmed. Further, they contend, they have not been enjoined into these proceedings and as such no action can be taken against them.
30. In contrast, the Respondent states that the Applicants were duly joined into these proceedings by the court after the 2<sup>nd</sup> Defendant's substitution. Furthermore, that they were duly issued with letters of administration and there is no legitimate reason why execution should be stayed.
31. The crux of the matter herein revolves around execution of a decree against a deceased judgment debtor. It is trite that once a judgment debtor dies, the mode of execution fundamentally changes. One cannot simply proceed as though the judgment debtor was still alive. Explaining this, the court in *Gregory Mutachi Wamache v Kweyu Okumu Ramadhan & another; Juliet Mutachi (Applicant); Jakata Auctioneers (Respondent)* [2021] eKLR stated as follows:
- “This is not the same as where the judgment debtor is alive and the property being proclaimed is presumed to be his. In this case, the judgment debtor is deceased. The moment he died, the situation changed and the decree holder's claim lies elsewhere with the deceased's estate and one would have to execute his decree against the deceased's estate through the administrator. Until this happens the judgment debtor cannot just go into the home of the deceased and proclaim.”
32. This principle is anchored in statute. Section 37 of the *Civil Procedure Act* provides:
1. Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the court which passed it to execute the same against the legal representative of such deceased, or against any person who has intermeddled with the estate of such deceased.
  2. Where the decree is executed against such legal representative, or against any person as aforesaid, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability the court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit.”
33. A reading of the foregoing makes it clear that a Decree Holder is permitted to execute against the legal representative of the deceased Judgment Debtor where the decree remains unsatisfied at the time of death.
34. As to whether formal substitution is a requirement in such circumstances, the courts have held in the negative. In *Rose Gacheri v Jane Nkirote* [2021] eKLR, the court held that Order 24 Rules 3, 4, 7, and 10 of the Civil Procedure Rules do not apply at the execution stage unless the statutory limitation period has lapsed.
35. Nonetheless, this contention is moot for the present purposes as the record shows that the Decree Holder filed a Motion dated 13<sup>th</sup> December, 2023, in which he sought to substitute the 2<sup>nd</sup> Judgment Debtor with his personal representatives. The same was allowed on 22<sup>nd</sup> May, 2024.
36. The next issue for determination is whether, as alleged by the Applicants, the execution by way of proclamation is premature. To begin with, it is undisputed that the Applicants are the legal representatives of the 2<sup>nd</sup> Defendant's Estate.



37. Pursuant to Section 2 of the *Civil Procedure Act*, a legal representative is defined as the person who in law represents the estate of a deceased person, and under the *Law of Succession Act*, this means an executor or administrator. It is equally undisputed that the Applicants hold an unconfirmed grant issued on 20<sup>th</sup> November, 2023
38. An administrator acquires the authority to deal with the estate upon the issuance of the grant, but such authority is limited prior to confirmation. Under Section 55(1) of the *Law of Succession Act*, no grant of representation, whether limited or not, confers power to distribute any capital assets or make any division of property unless and until the grant has been confirmed under Section 71. It is only upon confirmation that the administrator gains full authority to deal with the estate as provided for under Sections 79, 82, and 83. Section 86 provides that debts are to be offset first, before distribution of the Estate.
39. This position was affirmed in *In Re Estate of M'Marete M'Mugaa (Deceased)* [2019] eKLR, where the court held that prior to confirmation, administrators hold the estate in trust with powers limited mainly to preservation and collection of assets, unless otherwise authorized by court.
40. It is trite that a decree against a deceased person, in the absence of a variation, setting aside or otherwise being stayed is a proven liability against the estate of the deceased. Addressing the manner in which such a debt may be realized, the court in *In re Dismas Anduru Achar (Deceased)* (Succession Cause 290 of 2007) [2022] KEHC 16349 (KLR) (14 December 2022) (Ruling), held:
- “Under the *Law of Succession Act*, at the distribution of the estate the legal representatives are required to pay debts the known debts of the deceased. Hence can a creditor decide for himself which asset he wants, then proceed to instruct auctioneers to take it? That cannot be the correct position. That is the mayhem the *Law of Succession Act* addresses by making provision for the manner in which the creditor of a deceased person can be paid his debts from the estate. Indeed, that is one of the duties of the legal representatives.
63. While it is true that the right place to determine the legality or otherwise of the decree in High Court Civil Case Number 41 of 1998 is in the civil court, this court is empowered to deal with all aspects of the estate of the deceased person as provided for in the *Law of Succession Act*.
64. It is my view that the act by a creditor of picking for himself a specific asset, not connected to the debt and appropriating it to himself without the due process set out in the *Law of Succession Act* actually amounts to intermeddling, when he or she is aware that the owner of the said land is dead.”
41. In the present case, there is no court order authorizing the realization of estate assets prior to confirmation of the grant. Subjecting the estate’s movable and immovable property to proclamation and sale at this stage would amount to an unlawful disposal of capital assets in contravention of Section 55 of the *Law of Succession Act*. Such action would disrupt the orderly administration of the estate, prejudice other beneficiaries, and expose the administrators to personal liability.
42. While the decretal sum constitutes a valid debt of the estate within the meaning of Section 37 of the *Civil Procedure Act*, the proclamation and attachment of the estate’s property prior to confirmation of the grant is irregular, and contrary to the *Law of Succession Act*.
43. The proper course is for the Respondent to either await confirmation of the grant or seek leave of the Succession Court to realize specific assets for payment of the debt in accordance with the *Law of*



Succession Act. It is the Succession Court too that can determine questions on intermeddling of the estate as alleged, noting that the allegation is as against a personal representative.

44. In the end, the court finds the Motion dated 25<sup>th</sup> February, 2025 to be merited. The execution process is hereby stayed pending confirmation of the grant or further orders of the Succession Court.

45. Each party shall bear its own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 23RD DAY OF OCTOBER, 2025.**

**O. A. ANGOTE**

**JUDGE**

In the presence of;

Mr. Ireri holding brief for Kingara for Plaintiff/Respondent

Mr. Onindo for Defendant/Applicant

Court Assistant: Tracy

