



REPUBLIC OF KENYA



KENYA LAW

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In re Estate of Colando M'Ringera alias Colando Kirimi M'Ringera (Deceased) (Family Appeal E014 of 2025) [2025] KEHC 14840 (KLR) (13 October 2025) (Ruling)

Neutral citation: [2025] KEHC 14840 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MERU

FAMILY APPEAL E014 OF 2025

SM GITHINJI, J

OCTOBER 13, 2025

**IN THE MATTER OF THE ESTATE OF COLANDO M'RINGERA
ALIAS COLANDO KIRIMI M'RINGERIA (DECEASED)**

BETWEEN

PURITY NTINYARI APPELLANT

AND

HELLEN GATWIRI KATHURIMA RESPONDENT

RULING

1. For determination is the Notice of Motion dated 18/6/2025 under Sections 47 and 50 of the [Law of Succession Act](#) and Rule 49 and 73 of the [Probate and Administration Rules](#), seeking that:
 1. Spent
 2. Spent
 3. This Honourable Court be pleased to stay the Execution/Implementation and/or effectuation of the grant dated 6.3.2024 and issued on 7.3.2024 in Githongo Principal Magistrate Succession Cause No. E080 of 2022 pending further orders of this court.
 4. This Honourable Court be pleased to call for the file in Githongo Principal Magistrate Succession Cause No. E080 of 2022 for purposes of this application and the attendant appeal.
 5. Costs of this application be borne by the Respondent.
2. The application is premised on the grounds on the face of it and supported by an affidavit sworn by Purity Ntinyari, the Applicant herein, on even date. She averred that on 11/6/2025, the trial court dismissed her meritorious application despite finding that the Respondent had sold 1 acre to her and she was in occupation thereof. She will suffer substantial loss if she is evicted from the land, which she



purchased from the deceased herein. The proceedings to obtain the grant were defective in substance and non-disclosure of the material fact that she had bought a part of the estate of the deceased.

3. The Respondent swore a replying affidavit on 30/6/2025, terming the application as frivolous, vexatious and an abuse of the court process, because the appeal is against the order of 11/6/2025, which is a negative order incapable of being stayed. The application was a ploy to circumvent the application dated 31/7/2024 in the trial court seeking the commitment of the Applicant to civil jail for intermeddling with the estate. She has learnt with utter shock that L.R No. Abothuguchi/Gaitu/4753, the estate property herein was subdivided on 2/10/2023 and new numbers issued despite the fact that deceased died on 20/1/2022. She further learnt that the Applicant had illegally and unlawfully transferred to herself L.R No. Abothuguchi/Gaitu/5425 on 9/11/2023. The Applicant's hands are soiled with illegalities and therefore, she cannot be afforded the orders sought in equity.
4. The Applicant swore a further affidavit on 8/8/2025 in support of her application. She averred that she was settled on 1 acre of the estate property by the deceased himself, in the presence of his wife, and the deceased executed all the transfer instruments to enable subdivision of the land and the eventual issuance of title deed to her. She has established a sufficient case to warrant grant of the orders sought, because she will suffer substantial loss in the event she is evicted from the land.
5. The application was canvassed by way of written submissions which were duly filed by counsel.

Determination

6. The singular issue for determination is whether the orders sought should be granted.
7. 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.”
8. I am guided by the holding of the Court of Appeal in [Butt v Rent Restriction Tribunal](#) [1979] eKLR that;
 - “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.”
9. The application was filed timeously on 18/6/2025 as the impugning judgment was delivered on 11/6/2025.



10. 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.”

11. The Applicant contends that she will suffer substantially if she is evicted from the estate property by the Respondent, whilst the Respondent terms the Applicant a stranger and an intermeddler with the estate.

12. I find that the Applicant has established to the satisfaction of the court sufficient cause to warrant the grant of the orders sought.

13. The contention by the Respondent that the stay sought is of a negative order which is incapable of execution is farfetched and misconceived, because the Applicant seeks stay of the implementation of the grant as opposed to the order of 11/6/2025 dismissing her application for revocation of grant. It is my candid view that the substratum of the Appeal will be preserved if the implementation of the grant is stayed pending the ultimate determination of the appeal.

14. Consequently, I find that the application dated 18/6/2025 is merited and it is allowed in the following terms;

1. Stay of execution/implementation and/or effectuation of the grant dated 6/3/2024 and issued on 7/3/2024 in Githongo Principal Magistrate Succession Cause No. E080/2022 is hereby issued pending the hearing and determination of the appeal herein.
2. The Applicant to compile, file and serve the Record of Appeal within 45 days from the date hereof.
3. In the event of default, the stay hereinabove granted shall lapse and the Respondent shall be at liberty to execute. Costs in the cause. Mention on 16/3/2026.

DATED AND DELIVERED AT MERU THIS 13TH OCTOBER, 2025.

S. M. GITHINJI

JUDGE

Apperances:-

Mrs. Mwanzia for the Appellant.

Mr. Thangicia for the Respondent.

