



REPUBLIC OF KENYA



KENYA LAW
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**Mugambi v Muriungi & 3 others (Civil Appeal E005 of 2024)
[2025] KEHC 15012 (KLR) (14 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15012 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
CIVIL APPEAL E005 OF 2024
RL KORIR, J
OCTOBER 14, 2025**

BETWEEN

ANNESTINE KANYUA MUGAMBI APPELLANT

AND

JULIA WANJA MURIUNGI 1ST RESPONDENT

CECILY WAIGANDU 2ND RESPONDENT

RAEL KAIMURI 3RD RESPONDENT

JOYCE KANGARIA KATHARE 4TH RESPONDENT

RULING

1. This ruling is in respect of the Application dated 11th November 2024 seeking the following orders;
 - i. Spent
 - ii. That this honourable court be pleased to issue an order of stay of execution of the ruling and subsequent orders delivered by Hon. J.M Gacheru in Marimanti Succession Cause No. 27 of 2020 on the 10th September 2024 pending the hearing and determination of the application herein.
 - iii. That this honourable court be pleased to issue an order of stay of execution of the ruling and orders delivered by Hon. J.M Gacheru in Marimanti Succession Cause No. 27 of 2020 on the 10th September 2024 pending the hearing and determination of Chuka HC Family Appeal No. E005 of 2024.
 - iv. Costs be in the cause.
2. The Application is founded on the grounds set out on and on the supporting affidavit of Annestine Kanyua Mugambi the Appellant/Applicant sworn on even date. She deposed that the trial court



- delivered its ruling on 10th September 2024 and she stands to suffer great prejudice and loss being aggrieved with the decision of the trial court that unless stay of execution is granted, she will be condemned without exercising her right of appeal. She further stated that the Respondents will not suffer any prejudice if the ruling and subsequent orders are stayed pending the hearing and determination of the Appeal.
3. The Respondents filed a replying affidavit in response to the Application sworn by Julia Wanja on 30th December 2024 The 1st Respondent and on behalf of the 2nd, 3rd and 4th Respondents. She stated that the Application was dead on arrival as it is bad in law, an abuse of the court process and fatally defective. That an order of stay can only be academic as there is nothing to stay out of the ruling delivered on 10th September 2024. Further, that the Applicant does not merit an order of stay as she is yet to comply with the trial court's orders of 10th September 2024 which require her to give an account on the status of the estate of the deceased within 30 days of that date.
 4. The Respondent further stated that the application was overtaken by events as the Applicant has since irregularly proceeded to transfer to herself most of the estate properties and as such, she stands to suffer no prejudice at all in the absence of an order of stay. That the Applicant has not demonstrated that she has an arguable appeal to warrant an order of stay pending appeal, and further that, the applicant has not satisfied any of the requirements under Order 42 Rule 6 of the Civil Procedure Rules 2010.
 5. The Application was canvassed by way of written submissions. The Applicant's submissions were dated 11th March 2025. She submitted that the Appeal which raises ten grounds of appeal was timeously filed in court. That it is fair and just for the estate property to be preserved in the interest of all parties until the Appeal is heard and determined. That this court has the discretion to grant stay orders under Order 42 Rule 6 of the Civil Procedure Rules. She relied on the case of Misc. Application No. E026 of 2024 Andriano Kinoti M'ringera v Consulata Mpinda Gichuru- Meru.
 6. The Respondents filed submissions dated 18th March 2025. They submitted that the trial court by the ruling dated 10th September 2024 rendered itself as follows:-
 - i. The grant issued on 30th November 2020 and confirmed on 9th September 2021 is hereby revoked pursuant to Section 76 of the Laws of Succession Act.
 - ii. The Petitioner/Respondent to give an account of the status of the estate of the deceased within 30 days.
 - iii. The Respondent Annstine Kanyua Mugambi and the Applicant Julia Wanja Muriungi are hereby appointed as co administrators for expediency of the administration of the estate of the deceased.
 - iv. That the co administrators to file fresh summons for confirmation of grant or alternatively each party to file separately.
 - v. That the introduction letter by the chief dated 5th November 2020 identifying all the beneficiaries entitled to the estate of the deceased is hereby adopted. The introduction letter by the chief dated 6th March 2020 is hereby struck off the record.
 - vi. Each party to bear its own costs.
 7. Counsel for the Respondents submitted that the Applicant intentionally disobeyed the said court orders and instead of giving an account of the estate of the deceased as ordered by the court she brought the instant Application and any stay orders granted can only be academic as at the time of filing the Application it had been overtaken by events.



8. They further submitted that the orders in the impugned ruling flow from the revocation of grant and therefore there can be no stay on revocation of grant. Further, that Order 46 Rule 6 of the Civil Procedure Rules 2010 under which the Application is brought cannot give effect to an order of stay which is otherwise specifically provided for under Order 42 Rule 6 of the Civil Procedure Rules. Lastly, the Respondent urged that the Applicant has not stated and/or shown that she stands to suffer any substantial loss if an order is not granted since the property in issue belonged to the estate of the deceased.

Analysis and determination

9. I have considered the Application, the grounds and the rival affidavits and submissions of the parties. The issue for determination is whether the Applicant meets the threshold for grant of orders of stay of execution as set out under Order 42 Rule 6 of the Civil Procedure Rules.
10. It is trite law that an appeal does not operate as an automatic stay of execution. The conditions which a party must establish in order for the court to order stay of execution are provided for under Order 42 Rule 6(2) Civil Procedure Rules. Order 42 Rule 6 of the Civil Procedure Rules stipulates: -
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 orders 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.
11. Therefore, under Order 42 Rule 6(2) of the Civil Procedure Rules, an applicant should satisfy the court that:
- i. Substantial loss may result to him/her unless the order is made;
 - ii. That the application has been made without unreasonable delay; and
 - iii. The applicant has given such security as the court orders for the due performance of such decree or order as may ultimately be binding on him.
12. Substantial loss was clearly explained in the case of *James Wangalwa & Another vs Agnes Naliaka Cheseto* [2012] eKLR: -

“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 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.”

13. The ruling by the trial court on 10th September 2024 revoked the grant issued on 30th November 2020 and confirmed on 9th September 2021 pursuant to Section 76 of the Law of Succession Act. It also ordered the Petitioner/Respondent to give an account of the status of the estate in 30 days; appointment of co-administrators; and required the Petitioner to file fresh summons for confirmation of grant.
14. The Respondents contend that the Applicant has not complied with those orders; that she has already transferred much of the estate property irregularly to herself.
15. The Applicant alleges she will suffer great prejudice and loss and that she will be condemned without appeal. However, the Applicant must demonstrate more than just a bare assertion; evidence of what the loss will be, e.g. that the property will be transferred out or be destroyed, that costs will be irrecoverable, that some irreversible steps will take place, etc.
16. The Respondents counter that the Applicant has already transferred much of the estate to herself, which suggests that any stay is largely academic or may not protect the estate.
17. On the record as described, there is no detailed evidence showing exactly what property will be lost or dissipated, what irreversible harm will occur, or that the estate is under risk if stay is not granted.
18. On whether there has been unreasonable delay, I observe as follows: The Applicant filed the Notice of Motion on 11th November 2024. The ruling was on 10th September 2024, meaning there was a delay of about two months, and which has not been adequately explained. The Respondents on other hand urge that Applicant has disobeyed the orders of 10th September, 2024 requiring her to give an account of the estate within 30 days.
19. As regards security for costs, the Applicant must tender such security as the Court deems fit for due performance of the orders or decree ultimately binding on her. The Applicant has not offered any security for costs.
20. From the foregoing, it is my conclusion that the Applicant has not sufficiently demonstrated that without the stay she will suffer substantial loss. There is no evidence specifically showing what property or rights are under imminent threat, or irreparable harm.
21. Further, the orders sought for stay are on negative orders incapable of being stayed. If an order is negative in nature meaning that it merely dismisses or refuses relief and does not impose any obligation or give any positive direction, then there is nothing to execute, and accordingly a stay of execution cannot be granted against it. This position was well stated in *Western College of Arts and Applied Sciences v Oranga & Others* [1976] KLR 63 where the court of Appeal stated:-

“But what is there to be executed under the judgment, the subject of the intended appeal? The High Court has merely dismissed the suit with costs. Any execution would be in respect of costs only. In such a case there can be no stay of execution of such a decree.”



22. In the persuasive case of Kenya Commercial Bank Ltd v Tamarind Meadows Ltd & 7 Others [2016] eKLR; Sewe J. stated as:-

“A stay of execution cannot be granted where there is nothing to be executed. A negative order does not require any positive step or action to be undertaken by the respondent.”

23. Consequently, I find the Application lacking in merit and the same is hereby dismissed.

24. Considering that the subject matter of the Appeal is estate property, I grant an order for the preservation of the estate and in particular that there shall be no further dealing in the estate property pending the hearing and determination of the Appeal.

Orders accordingly.

RULING DELIVERED, DATED AND SIGNED AT CHUKA THIS 14TH DAY OF OCTOBER, 2025.

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R. LAGAT-KORIR

JUDGE

Ruling delivered in the absence of Mr. Ndubi for the Applicant and in the presence of Mr. Ndubi for the Respondent. Muriuki (Court Assistant.)

