

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BOMET
SUCCESSION CAUSE NUMBER 55A OF 2022

JOSEPHINE CHEBET RUTO
APPLICANT

VERSUS

ALICE CHEPNGENO RUTO
RESPONDENT

RULING

1. The Applicant a Notice of Motion Application dated 27th March 2025 seeking the following orders: -

I. Spent.

II. Spent.

III. THAT the Honourable Court be pleased to issue an order staying the execution of the Ruling dated 29th January 2025 against the Appellant/Applicant pending hearing

and determination of Nakuru Court of Appeal Civil Appeal Number E046 of 2025, Josephine Chebet Ruto vs Alice Chepngeno Ruto.

IV. THAT this court to make any other appropriate orders it may deem proper.

V. THAT the costs of this Application be provided for.

2. The Application was brought **sections 1A, 1B, 3 and 3A of the Civil Procedure Act, Order 42 Rule 6, Order 51 Rules 1 of the Civil Procedure Rules.** The Application was based on the grounds on the face of the Application and further by the annexed Supporting Affidavit of Josephine Chebet Ruto sworn 27th March 2025.

The Applicant's case.

3. The Applicant stated that this court delivered a Ruling on 29th January 2025. That she was aggrieved by the said Ruling and filed a Notice of Appeal dated 6th February 2025 in the Court of Appeal in Nakuru. The Applicant further stated that the

Respondent was in the process of extracting the Decree and was determined to execute.

4. It was the Applicant's case that if execution proceeded, her Appeal shall be rendered nugatory and ineffective. That her Appeal was arguable and had a high chance of success and if she were denied the stay order, she would have been denied a chance to exhaust all the legal remedies available to her and she would suffer irreparably.

5. The Applicant stated that she was willing to provide security for the due performance of the Decree and was ready to comply with any conditions set by this court. That she had brought her Application in good faith and without undue delay.

6. In her written submissions dated 26th May 2025, the Applicant submitted that her Application had met the threshold required for granting the order of stay as set out in

Order 42 Rule 6 of the Civil Procedure Rules and James Wangalwa & another vs Agnes Naliaka Cheseto (2012)

eKLR et.al. That according to **section 1A (2) of the Civil Procedure Rules**, the court was enjoined to give effect to the overriding objective in exercising its powers.

7. It was the Applicant's case that her intended Appeal was not frivolous, raised weight and Bonafide issues for determination. That the Respondent would evict her and her family unless the order for stay was granted.

8. The Applicant submitted that the Respondent had not addressed the issue for stay of execution but had delved into the merits of the Appeal.

Response

9. The Respondent filed a Replying Affidavit dated 9th May 2025. She stated that the present Application was another attempt by the Applicant to delay, frustrate and obstruct the execution process. That this court heard the parties substantively and found the Applicant's Application lacked merit and rightly dismissed it. The Respondent further stated that this court directed the County Surveyor, Bomet County

to proceed with the implementation of the rectified Grant and had already initiated compliance with the court's order.

10. It was the Respondent's case that the Applicant's Appeal was baseless, vexatious and amounted to an abuse of the court process. That it did not raise any new issues and sought to resurrect arguments that had been determined. It was the Respondent's further case that the Appeal had no chance of success.

11. The Respondent stated that the Applicant had failed to demonstrate any irreparable harm that she would suffer should the execution proceed. That on the other hand, the Respondent and other beneficiaries of the deceased's estate continued to suffer prolonged hardship and injustice. The Respondent further stated that the Applicant's delay tactics were a clear indication of bad faith.

12. It was the Respondent's case that this court should dismiss the present Application and allow the succession process to proceed with finality.

13. At the time of writing this Ruling, the Respondent had not filed her written submissions. I shall proceed with the pleadings on record in making my determination.

14. I have gone through and considered the Notice of Motion Application dated 27th March 2025; the Respondent's Replying Affidavit dated 9th May 2025 and the Applicants' written submissions dated 26th May 2025. The only issue for my determination was whether the Applicant ought to be granted stay of execution pending Appeal.

15. The principles that relate to stay of execution orders are well settled. **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.

16. Thus, under **Order 42 Rule 6(2) of the Civil Procedure Rules**, the Applicant should satisfy the court that: -

- i. Substantial loss may result to him unless the order of stay is granted.
- ii. That the Application has been made without unreasonable delay.
- iii. The Applicant gives such security as the court orders for the due performance of such Decree or order as may ultimately be binding to them.

17. The Court of Appeal in **Chris Munga N. Bichage v Richard Nyagaka Tongi & 2 others** [2013] KECA 141 (KLR) held: -

“.....The law as regards applications for stay of execution, stay of proceedings or injunction is now well settled. The applicant who would succeed upon such an application must persuade the court on two limbs, which are first, that his appeal or intended appeal is arguable, that is to say it is not frivolous. Secondly, that if the application is not granted, the success of the appeal, were it to succeed, would be rendered nugatory. These two limbs must both be demonstrated and it would not be enough that only one is demonstrated.....

.....I do not think, in law it is necessary that there be more than a certain number of arguable issues for the court to find that the appeal filed or the intended appeal is arguable. In fact, in law one arguable point suffices for that finding.”

18. I concur with Odunga J. (as he then was) in **Michael Ntouthi Mitheu v Abraham Kivondo Musau [2021] KEHC 4530 (KLR)**, where he found: -

“In Vishram Ravji Halai vs. Thornton & Turpin Civil Application No. Nai. 15 of 1990 [1990] KLR 365, the Court of Appeal held that whereas the Court of Appeal’s power to grant a stay pending appeal is unfettered, the High Court’s jurisdiction to do so under Order 41 rule 6 of the Civil Procedure Rules is fettered by three conditions namely, establishment of a sufficient cause, satisfaction of substantial loss and the furnishing of security. Further the application must be made without unreasonable delay. To the foregoing I would add that the stay may only be granted for sufficient cause and that the Court in deciding whether or not to grant the stay

and that in light of the overriding objective stipulated in sections 1A and 1B of the Civil Procedure Act, the Court is no longer limited to the foregoing provisions. The courts are now enjoined to give effect to the overriding objective in the exercise of its powers under the Civil Procedure Act or in the interpretation of any of its provisions.

19. On the issue of the Appeal being arguable, I have perused the Memorandum of Appeal dated 25th March 2022 and I have noted that the Applicant had relied on seven (7) grounds in her Appeal. As stated by **Chris Munga N. Bichage (*supra*)** above, one ground was sufficient to make an Appeal arguable. I disagree with the Respondent's contention that the grounds raised by the Applicant had already been determined. I say so because at this point, the court cannot interrogate the merits of the Appeal and its scope was only limited to

finding out whether the Appeal was arguable. It is my finding therefore that the Applicant's Appeal was arguable and not frivolous.

20. On the issue of the Appeal being rendered nugatory in the event the stay order was denied, the Applicant stated that the Respondent had begun execution proceedings and the Respondent would evict her. This was confirmed by the Respondent in her Replying Affidavit dated 9th May 2025 that she had initiated execution proceedings. This meant that if the Respondent proceeded with the execution process, the Respondent would be evicted and would make the Appeal an academic exercise. I am convinced and find that the Applicant has demonstrated the chances of her Appeal being rendered nugatory if the stay order was not granted.

21. Additionally, I have noted that the Application was filed without undue delay.

22. Looking at the case as a whole, justice demands that the Applicant should not be blocked or curtailed from seeking legal redress as she has demonstrated by her Memorandum of Appeal. On the other hand, the court also notes that the Respondent ought to enjoy her fruits of her Judgement. A

23. While weighing the scales of justice and in exercise of my discretion, I make the following orders: -

- i) Stay of execution of the Ruling dated 29th January 2025 is issued pending the hearing and determination of the Appeal at the Court of Appeal in Nakuru.
- ii) The Applicant shall file her Record of Appeal strictly within 30 days of today's Ruling.
- iii) Failure to meet the above conditions (i) and (ii) shall void the stay.

iv) Each party to bear their own costs.

**Ruling delivered, dated and signed at Bomet this 23rd Day
of October, 2025.**

.....
HON. JULIUS K. NG'ARNG'AR
JUDGE

Ruling Delivered in the presence of;
Susan/Siele Court Assistant
Kirui for 1st and 2nd petitioner
Mugumya for 1st and 2nd Objector