



**Wawira v Kariuki & 2 others (Civil Appeal E044 of 2025)
[2025] KEHC 15660 (KLR) (28 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15660 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CIVIL APPEAL E044 OF 2025
EM MURIITHI, J
OCTOBER 28, 2025**

BETWEEN

MARGARET WAWIRA APPELLANT

AND

SERAH WANGITHI KARIUKI 1ST RESPONDENT

STEPHEN GICHANGI NJOGU 2ND RESPONDENT

THOMAS MURI NJOGU 3RD RESPONDENT

RULING

1. The Court has considered the application dated 16/6/2025 seeking the stay of proceedings of the Kerugoya CHC Succession Case No. E445 of 2021 and stay of execution of decree and orders issued by ruling of 4/3/2025, pending appeal to this Court.
2. The decision in the ruling of 4/3/2025 dismissed the applicant's objection to the appointment of Administrator to the Estate.
3. By a Memorandum of Appeal dated 3/4/2025, the appellant sets up grounds of appeal principal of which is that the trial court proceeded to make a decision without giving the appellant a fair hearing and opportunity to be heard. The grounds of appeal cannot be said to be frivolous, and there is a serious question to be considered by the appeal court.
4. There is no inordinate delay in presenting this application for stay of proceedings or stay of execution.
5. By Replying Affidavit of the 1st Respondent of 30/6/2025, the Respondent charges the applicant with non-disclosure of crucial facts of a finding by the trial court in a ruling of 23/1/2024 that the issue whether the applicant is a spouse of the deceased and whether they have children was not proved but that the grant had been revoked for other reasons. That upon filing of a fresh application for confirmation of Grant, with a Replying Affidavit by the Applicant, the 1st respondent filed an objection



that the court was functus office. The objection was struck out by the Ruling subject of the appeal. The Respondent also questions the basis of the application by the applicant who she says was “not a child or spouse of my father. She is not a dependant.”

6. The Court considers that there is an arguable appeal on the question of denial of a fair hearing and opportunity to be heard on the application the ruling which is the subject of the appeal.
7. An arguable appeal need not be one that must succeed at the hearing; it is only one that raises an issue suitable for consideration by the court for determination.
8. The appeal shall be rendered nugatory if the application for confirmation of Grant proceeds to hearing before the hearing of the appeal.
9. The remedy for the parties herein lies in the expeditious disposal of the dispute bearing in mind the question of locus standi of the applicants and the need for effective administration of the estate.

Orders

10. Accordingly, for the reasons set out above, the Court grants the Notice of Motion dated 16/6/2025 upon terms that:
 1. An order of stay of proceedings in Kerugoya CMC civil suit no. E445 of 2021 is granted pending the hearing of the appeal herein.
 2. An order of stay of execution of the ruling dated 4/3/2024 allowing the application dated 19/11/2024 is granted pending hearing of the appeal for one hundred and twenty (120) days only to allow for the hearing of the appeal.
 3. The Record of Appeal shall be filed within 14 days, the Court having ascertained that the trial court record has been typed and certified.
11. Costs in the appeal.
Orders accordingly.

DATED AND DELIVERED THIS 28TH DAY OF OCTOBER 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Kipruto for Ms. Kimotho for the Applicant.

Ms. Mwangi for Mr. Maina Kagio for 1st Respondent.

