



**In re Estate of Benjamin Kibuka Michuki (Deceased) (Succession Cause 672 of 2013) [2025] KEHC 15982 (KLR) (7 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 15982 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
SUCCESSION CAUSE 672 OF 2013  
MA ODERO, J  
NOVEMBER 7, 2025**

**IN THE MATTER OF THE ESTATE OF BENJAMIN KIBUKA MICHUKI (DECEASED)**

**BETWEEN**

**KENNETH KINGORI KIBUKA ..... APPLICANT**

**AND**

**TERESA WAMBUI GITHINJI ..... RESPONDENT**

**RULING**

1. Before this Court for determination is the Notice of Motion dated 11<sup>th</sup> March 2025 by which the Applicant Kenneth Kingori Kibuka seeks the following orders:-
  - “1. Spent.
  2. That this Honourable Court may be pleased to grant stay of Execution in this file pending the hearing and final determination of the Civil Appeal No. E021 of 2025 Nyeri in the Court of Appeal.
  3. That Hippo General Merchant and Auctioneer be stopped from executing the order given on 4/3/2025 until further orders from this court.
  4. That costs of this Application be costs in the cause.”
2. The application was supported by the affidavit of even date sworn by the Applicant.
3. The Respondent Teresa Wambui Githinji opposed the application for stay through her Replying Affidavit dated 17<sup>th</sup> March 2025. The matter was canvassed by way of written submissions. The Applicant filed the written submissions dated 29<sup>th</sup> May 2025 whilst the Respondent relied upon her written submissions dated 16<sup>th</sup> June 2025.



## Background

4. This succession Cause relates to the estate of the late Benjamin Kibuka Michuki who died intestate on 22<sup>nd</sup> March 2010. A copy of the Death Certificate Serial Number 296620 was filed in Court on 10<sup>th</sup> February 2014.
5. The Deceased was said to have been survived by the following persons;-  
GRAPHHeresa Wambui Githinji - Widow
  1. John Githinji Kibuka - Son
  2. Grace Wamucii Githinji - Daughter
  3. Joyce Wacheke Kibuka - Daughter
  4. Lucy Wangari Karangi - Daughter
  5. George Gitahi Kibuka - Son
  6. Peter Wachira Kibuka - Son
  7. Grace Wamuchii Karoki - Daughter
  8. Michael Kinyua Kibuka - Son
  9. Jane Muthoni Munyoro - Daughter
  10. Margaret Wangari Ngatua - Daughter
  11. Kenneth Kingori Kibuka - Son
6. The Deceased left behind only one asset being the parcel land known as LR Number Nyeri/Mweiga/1049 comprising 1.3 Hectares.
7. Following the demise of the Deceased no family member applied for a Grant of letters of Administration, to the estate.
8. Accordingly the widow Teresa Wambui Githinji filed a citation dated 1<sup>st</sup> October 2013 directing the sons and daughter of the Deceased to take out letters of Administration.
9. The citees did not file any response to the citation and on 15<sup>th</sup> April 2014 the Court issued the Respondent (widow) with Grant of letters of Administrations Intestate.
10. The Respondent then proceeded to file a Summons for confirmation of Grant dated 16<sup>th</sup> October 2014 indicating that the estate property devolve to herself absolutely.
11. At that point one George Gitahi Kibuka a child from the 1<sup>st</sup> House filed the Affidavit of Protest dated 13<sup>th</sup> March 2015 in which he alleged that the Respondent had separated from the Deceased and further alleged that the Deceased left behind a written will dated 5<sup>th</sup> August 2009.
12. That protest was heard by way of Vive Voce evidence and vide a judgment delivered on 24<sup>th</sup> July 2020, Hon. Justice Ngaah dismissed the Protest and directed that the Grant which had been issued to the Respondent on 15<sup>th</sup> April 2014 be confirmed. The Court further directed that Title Number Nyeri/Mweiga.1049 be divided equally between the two houses with the 1<sup>st</sup> House getting 0.6055 acres and the Applicant was to get 2.6055 acres.



13. Following this judgment a certificate of Confirmed Grant dated 24<sup>th</sup> July 2020 was issued in the name of the Respondent Teresa Wambui Githinji. The Respondent proceeded to execute the Grant and obtained a Title to her portion of the estate in her own name. The Objectors and their siblings declined to execute the required documents for transmission of the estate forcing the Respondent to file an application seeking to have the documents executed by the Hon. Deputy Registrar of the High Court. Vide a ruling delivered on 17<sup>th</sup> August 2022, Hon. Lady Justice F. Muchemi allowed this application.
14. The Respondent then issued a notice to the family members asking them to vacate the portion of the land which land been allocated to herself. At this point the two objectors filed a Summons seeking to have the Grant which had been issued to the Respondent revoked.
15. The summons seeking revocation of the Grant was heard by this court. Vide a judgment delivered on 25<sup>th</sup> October 2024 the court dismissed that Summons for revocation of Grant.
16. The Applicant then filed a Notice of Appeal dated 4<sup>th</sup> November 2024 challenging the judgment delivered by this Court on 25<sup>th</sup> October 2024. The applicant also filed this present application seeking to stay the distribution of the estate pending the hearing and determination of his appeal.

### **Analysis And Determination**

17. I have carefully considered this application the reply filed thereto as well as the written submissions filed by both parties.
18. The only issue for determination is whether the court should stay execution of the judgment delivered on 25<sup>th</sup> October 2024 pending the hearing and determination of the Applicants Appeal.
19. Firstly it is trite law that the existence of a pending appeal is not grounds for a stay. [see Order 42 Rule 6 Civil Procedure Rules 2010].
20. Secondly in the judgment delivered on 25<sup>th</sup> October 2024 the court dismissed the summons for revocation of Grant which had been filed by the Applicant. In other words the court made a ‘negative order’. Such an order is not capable of being stayed because a negative order is not one which requires action by any party. A negative order does not compel any party to do or to desist from doing any act.
21. In *Co-operative Bank Of Kenya v Banking Insurance & Finance Union (Kenya)* [2015] eKLR the Court held that
 

“An order for stay of execution pending appeal is ordinarily an Interim Order which seeks to delay the performance of positive delegations that are set out in a decree as a result of a judgment. The delay of performance pre-supposed the existence of a situation to stay-called a positive order – either an order that has not been complied with or has partly been complied with .....
22. In *Kenya Commercial Bank Ltd v Tamarind Meadows Limited & 7 OTHERS* [2016] eKLR the Court of Appeal stated as follows:-
 

“The order of 18<sup>th</sup> December 2018 merely dismissed the application for setting aside the judgment with costs. By the order the Supreme Court did not order any of the parties to do anything or refrain from doing anything or to pay any sum. It was thus a negative order which is incapable of execution save in respect of costs only. The same reasoning was applied in the case of *Raymond M. Omboga v Austine Pyan Maraga* [supra] that a negative order



so that is incapable of execution and thus, incapable of being stayed. This is what the court had to say on the matter.

“The order dismissing the application is in the nature of a negative order and is incapable of stay of execution save perhaps for costs and such order is incapable of stay. Where there is no positive order made in favour of the respondent, which is capable of execution of such an order... The applicant seeks to appeal against the order dismissing his application. This is not an order capable of being stayed because there is nothing the applicant has lost. The refusal simply means that the applicant stays in the situation he was before coming to court and therefore the issues of substantial loss that he is likely to suffer or the appeal being rendered nugatory does not arise.” [own emphasis]

23. In the same light I find that the order dismissing this Applicants summons for revocation of Grant is a negative order which is not capable of being stayed.
24. The judgement appealed against was delivered on October 2024. This application for stay was not made until March 2025 which is five (5) months after delivery of the judgment. The Applicant has not given any explanation for this delay which though substantial cannot be said to be inordinate.
25. Finally I find no merit in this application. The same is dismissed in its entirety. This being a family matter I make no orders on costs.

**DATED IN NYERI THIS 7<sup>TH</sup> DAY OF NOVEMBER 2025.**

**MAUREEN A. ODERO**

**JUDGE**

