



**Karumba & another v Kungu & 3 others (Succession Cause 138 of 1983)
[2025] KEHC 16130 (KLR) (Family) (6 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16130 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 138 OF 1983
HK CHEMITEI, J
NOVEMBER 6, 2025
IN THE MATTER THE ESTATE OF KUNGU KARUMBA (DECEASED)**

BETWEEN

JOHNSON MUCHAI KARUMBA 1ST APPLICANT

CHRISTOPHER KARUMBA KUNGU 2ND APPLICANT

AND

PETER MUCHAI KUNGU 1ST RESPONDENT

HANNAH WAIRIMU KUNGU 2ND RESPONDENT

ROSE NJERI NDUNGU 3RD RESPONDENT

OFFICE OF THE PUBLIC TRUSTEE 4TH RESPONDENT

RULING

1. This ruling relates to the applications dated 10th June, 2024 filed by the Applicants, Johnson Muchai Karumba and Christopher Karumba Kungu; seeking for orders that:-
 1. This honourable court be pleased to grant an order for stay of these proceedings pending the hearing and determination of the Applicants' intended appeal to the court of appeal against the ruling delivered by this honourable court on 7th March, 2024.
 2. Costs of this application be in the cause.
2. The application is based on the grounds thereof and supported by affidavit sworn by Johnson Muchai Karumba on 10th June, 2024.



3. He avers inter alia that they are the sons of the deceased, and one of them has been duly authorized by Christopher Karumba Kung'u to swear this affidavit on his behalf. On 7th March 2024, this Honourable Court delivered a ruling dismissing their summons for revocation of grant dated 23rd June, 2022.
4. Aggrieved by that decision, they have lodged an appeal in the Court of Appeal, and a Notice of Appeal was duly filed before this court on 21st March 2024. Their advocates on record subsequently requested certified copies of the typed proceedings, ruling and order arising from the decision delivered on 7th March, 2024. They have since been actively following up on the progress of that request with the court registry and they have obtained certified copies of both the ruling and the order, but are yet to receive the certified typed proceedings, which has occasioned the delay in lodging the appeal before the Court of Appeal.
5. The typing of the proceedings is currently ongoing and has proven lengthy and complex, given that the matter has been handled by several judicial officers over the years. They aver that they have an arguable appeal with high chances of success, but that success would be rendered nugatory unless this Honourable Court grants an order of stay of proceedings in the present matter pending the hearing and determination of their appeal. Unless a stay is granted, the continuation of proceedings in this suit will render their intended appeal futile and deprive them of their constitutional right to be heard and to fairly present their case before the appellate court.
6. The application is opposed vide grounds of opposition dated 11th July, 2024 and replying affidavit sworn by Tevin Nazario Nyagah Ndungu on 19th July, 2024.
7. The grounds of opposition are based on the grounds that:-
 1. Justice delayed is justice denied. This matter has been in the courts for over 40 years, and staying the judgment and proceedings would be contrary to the interests of justice and public policy. The protracted delay in these proceedings has already caused considerable prejudice to the parties involved.
 2. There is a need for finality in litigation. This case has been pending for an excessive period, and a stay would prevent the final resolution of the matter, causing undue hardship to the parties involved. The public interest and the need for judicial efficiency demand the resolution of long-standing cases.
 3. The Applicants have not provided security for costs of the appeal and therefore the orders prayed should not be issued.
 4. The application for stay lacks sufficient merit or compelling reasons. The Applicants have not demonstrated that they have a strong case or that the appeal has a high probability of success. The application is an abuse of the court process, intended to delay and frustrate the enforcement of the judgment.
 5. Further delay in the proceedings could potentially harm third parties who may have interests tied to the resolution of the case. The Applicants have failed to demonstrate that they would suffer irreparable harm if the stay is not granted. Monetary compensation or other remedies are sufficient to address any potential harm.
 6. The application seeks to defeat the rights of the beneficiaries to the Estate of the late Kungu Karumba and should therefore be struck out.



8. In the replying affidavit, Tevin Nazario Nyagah Ndungu avers inter alia that he is the son of the 3rd Respondent and holds a Special Power of Attorney No. IP/A 6720/1/1, donated to him by the said Respondent, authorizing him to execute documents relating to the deceased's estate on her behalf, and is therefore competent to swear this affidavit.
9. That the inordinate delay in concluding these proceedings has greatly prejudiced the beneficiaries of the deceased's estate. It is trite that justice delayed is justice denied; thus, it would be contrary to the interests of justice and public policy to grant a stay of judgment or proceedings in a matter that has remained unresolved for over four decades.
10. The Applicants' application for stay lacks merit, as they have failed to demonstrate that their intended appeal has any reasonable prospects of success.
11. On 4th June, 2019, Hon. Justice J.N. Onyiego issued letters of administration to representatives of the three family units constituting the deceased's estate, thereby revoking the grant previously issued to the Public Trustee on 30th November, 1992.
12. Subsequently, on 16th December, 2021, Lady Justice Mutuku dismissed the Applicants' application for an injunction against the current Respondents. The Applicants appealed that ruling in Nairobi Civil Appeal No. E075 of 2022, which remains pending and unheard on its merits.
13. Additionally, on 6th September, 2021, the Applicants filed proceedings against Al Bushra Real Estate Limited in the Environment and Land Court (ELC) Nairobi Case No. E223 of 2021, in which the Respondents were named as interested parties. It is noteworthy that this suit was instituted while a similar application was still pending in Succession Cause No. 138 of 1983, amounting to duplication of proceedings and a clear abuse of the court process.
14. Such conduct multiplies litigation unnecessarily, risks conflicting judicial outcomes and erodes judicial autonomy and fairness. There is an urgent need to bring finality to this long-standing dispute. Granting a stay would only prolong an already protracted matter thus inflicting further hardship on all parties involved.
15. The application is therefore an abuse of the court process, designed to delay justice and frustrate the enforcement of lawful judgments. The Applicants have had ample opportunity to present their case and pursue appellate remedies.
16. Granting a stay at this stage would undermine public confidence in the judiciary and set an undesirable precedent of encouraging endless litigation. Moreover, there exists a valid and binding lease agreement between the administrators of the estate and Al Bushra Real Estate Limited, duly executed after compliance with all statutory requirements, including an official land registry search. Proceeds from the said lease have been lawfully distributed among the beneficiaries, including the Applicants, through Hannah Wairimu Kungu, the administrator of the first house.
17. Any further postponement of these proceedings would adversely affect third parties with legitimate interests linked to the outcome of this case. It is therefore crucial that this Honourable Court considers the broader implications of granting a stay, which would undermine the proper administration of justice and delay the final settlement of the estate.
18. That the Applicants have not demonstrated that they stand to suffer irreparable harm if the stay is declined. Any potential prejudice can be adequately remedied by monetary compensation or other appropriate relief. Furthermore, they have not provided security for the costs of the appeal, and on these grounds, the Respondents urge this Honourable Court to dismiss the application in its entirety.



19. The Applicants have filed written submissions dated 6th November, 2024 placing reliance on the following:

1. Mursad Guleid & Others vs Daniel Kioko Musau [2016] eKLR where it was held as follows: “The effect of order 42 rule 6 of the Civil Procedure Rules is simply that an appeal from an order or judgment will not provide automatic stay of the execution of that order or of proceedings in that case unless the trial court or appellate court orders. In my view, while a stay of execution may call for an examination whether the order appealed from is executive or not, it is not so with stay of proceedings which halts the proceedings or further steps in the case pending the appeal from the order or judgment, executive or non – executive pending hearing and determination of the intended appeal. In both instances, of course, the primary consideration is that the appeal, if successful, should not be rendered nugatory.”
2. Butt vs Rent Restriction Tribunal (1977) cited with approval in Congress Rental South Africa vs Kenyatta International Convention Centre; Co – operative Bank of Kenya Limited & Another (Garnishee) [2019] eKLR where it was held as follows:
 - i. The power of the court to grant or refuse an application for stay of execution is a discretionary power. The discretion should be exercised in such a way as not to prevent an appeal.
 - ii. The general principle in granting or refusing stay is: if there is not other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should that appeal court reverse the judge’s discretion.
 - iii. A judge should not refuse a stay if there are good grounds for granting it merely because in his opinion a better remedy may become available to the applicant at the end of the proceedings.
 - iv. The court in exercising its discretion whether to grant or refuse an application for stay will consider the special circumstances of the case and its unique requirement.”

20. The 1st and 3rd Respondents have filed written submission dated 14th May, 2025, placing reliance on the following:

1. Nairobi HC Winding Up Cause No. 43 of 2000: Global Tours & Travels Limited where it was held as follows: “Whether or not to grant a stay of proceedings is a matter of judicial discretion to be exercised in the interests of justice, regard being had to the circumstances of each particular case. The sole consideration is whether it is in the interests of justice to order a stay of proceedings.”
2. Re Estate of Murathe Mwangi (Deceased) [2022] eKLR where it was stated as follows: “The court should not entertain applications that serve no purpose other than to delay the administration of an estate, particularly where the delay is prejudicial to the rightful beneficiaries.”
3. Kenya Commercial Bank Ltd vs Benjoh Amalgamated Ltd [1998] eKLR where it was held as follows: ‘A party should not be permitted to abuse the court process by filing multiple applications aimed at frustrating the ends of justice and delaying final determination of disputes.’
4. Argan Wekesa vs Dima College Limited & 2 Others [2015] eKLR where it was stated as follows: “Even though I find that it is prudent to save a suit if justice will be done to the parties,



it must be noted that justice delayed is justice denied. This court is enjoined by Article 159 2 (c) of *the Constitution* of Kenya to determine disputes and render justice without undue delay. Failure to do so will infringe upon the legitimate expectation of a defendant that the dispute against it will be determined timeously.”

Analysis and Determination

21. I have read the application before this court, the response thereto and the rival submissions.
22. The issues for determination, as crafted by the Respondent are as follows:-
 - i. Whether the application meets the threshold for grant of stay of proceedings.
 - ii. The need for finality in litigation.
 - iii. Whether the application is an abuse of court process.
23. In *Turbo Highway Eldoret Ltd v Muniu* (Civil Appeal E040 of 2021) [2022] KEHC 10197 (KLR) (30 June 2022) (Ruling) the court stated as follows:
 - “ 18. In *William Odhiambo Ramogi & 2 Others v the Honourable Attorney General & 3 Others* [2019] eKLR, a 5-judge Bench of the High Court, after looking at our jurisprudential scan on the question of stay of proceedings, authoritatively laid out the principles our Courts have established for the grant of stay of proceedings pending the hearing and determination of an appeal over an interlocutory application to a higher Court. See: *Kenya Shell Limited v Benjamin Karuga Kibiru & another* [1986] eKLR; *Global Tours & Travels Limited (Nairobi HC Winding Up Cause No. 43 of 2000)*; *David Morton Silverstein v Atsango Chesoni* [2002] eKLR: They laid down the following six principles:
 - a. First, there must be an appeal pending before the higher Court;
 - b. Second, where such stay is sought in the Court hearing the case as opposed to the higher Court to which the Appeal has been filed and there is no express provision of the law allowing for such an application, the Applicant should explain why the stay has not been sought in the higher Court. This is because, due to the potential of an application for stay of proceedings to inordinately delay trial, there is a policy in favour of applications for stay being handled in the Court to which an appeal is preferred because such a Court is familiar with its docket and is therefore in a position to calibrate any order it gives accordingly;
 - c. Third, the Applicant must demonstrate that the appeal raises substantial questions to be determined or is otherwise arguable;
 - d. Fourth, the Applicant must demonstrate that the Appeal would be rendered nugatory if the stay of proceedings is not granted;
 - e. Fifth, the Applicant must demonstrate that there are exceptional circumstances which make the stay of proceedings warranted as opposed to having the case concluded and all arising grievances taken up on a single appeal; and



- f. Sixth, the Applicant must demonstrate that the application for stay was filed expeditiously and without delay.
19. All these factors must be considered, in a given case, in the spirit concisely expressed in Halsbury's Laws of England, 4th Edition, Vol. 37 at p. 330: The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the Court's general practice is that a stay of proceedings should not be imposed unless the proceedings, beyond reasonable doubt, ought not to be allowed to continue.... This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases... It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground must show not merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of this case.
21. In short, a stay of proceedings is a radical remedy which is only granted in very exceptional circumstances. In the words of Ringera J. in *Global Tours & Travels Limited (Nairobi HC Winding Up Cause No. 43 of 2000)*: As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of Justice..... the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously (emphasis added)
22. What emerges from the discussion above is that the grant of a stay of proceedings pending the hearing of an interlocutory appeal in civil matters is a rare and exceptional remedy.
23. As a general matter, an appellate court will only exercise its discretion to grant a stay of proceedings pending an appeal over an interlocutory matter before a magistrate's Court or Tribunal only in exceptional circumstances. While difficult to determine with mathematical precision when the Court will use this power, it is only to be sparingly used where, in the words of South African authors, Gardiner and Lansdown (6th Ed. Vol. 1 p. 750), "grave injustice might otherwise result or where justice might not by other means be attained." As the authors correctly write, the Court will generally "hesitate to intervene, especially having regard to the effect of such a procedure upon the continuity of proceedings in the Court below."
24. Hence, the propriety of granting a stay of proceedings pending an appeal over interlocutory matters is decided on the facts of each case and with



“due regard to the salutary general rule that appeals are not entertained piecemeal.” (Walhaus & Others v Additional Magistrate, Johannesburg & Another, 1959 (3) SA 113(A) at 120D; S. v Western Areas Ltd & Others 2005 (5) SA 214 (SCA) at 224D...”

24. I have cited the above authorities in extensio to highlight the grounds upon which the court can allow or not the nature of the application herein. I am not persuaded that the Applicants merit the orders sought.
25. In the first instance it is appreciated that this matter has been in court since 1983. To be fair to the parties, the courts and all and sundry litigation must come to an end. The family of the late freedom fighter must let him rest wherever he is.
26. The Applicants will of course have their day at the appellate court but I do not respectfully find any reason to warrant issuing stay orders prayed.
27. Secondly, they have not offered any security for costs pending the intended appeal and that I do not see their appeal being rendered nugatory should it succeed.
28. In the premises:-
 - (a) Leave to appeal is granted.
 - (b) Stay pending appeal is denied.
 - (c) Costs in the cause.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 6TH DAY OF NOVEMBER 2025.

H K CHEMITEI

JUDGE

