



REPUBLIC OF KENYA



**KENYA LAW**

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**Kibisu v Kibisu (Civil Application E105 of 2025)  
[2025] KECA 2177 (KLR) (11 December 2025) (Ruling)**

Neutral citation: [2025] KECA 2177 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CIVIL APPLICATION E105 OF 2025  
MA WARSAME, JM MATIVO & PM GACHOKA, JJA  
DECEMBER 11, 2025**

**BETWEEN**

**DAURICE CHEDEYE KIBISU ..... APPLICANT**

**AND**

**LUCY WANJIRU KIBISU ..... RESPONDENT**

*(Being an application for stay of execution and stay of further proceedings pending appeal from the Ruling of Nakuru High Court (H.I. Ong'udi, J.) dated 27th March, 2025 in Succession Cause No. E28 of 2022)*

**RULING**

1. Before us is an application dated 30<sup>th</sup> June 2025 anchored under Rule 5(2)(b) of the Court of Appeal Rules (the Rules) wherein the applicants seek inter alia, the following orders:
  - a. That this Honourable Court be pleased to stay further proceedings and execution of the ruling delivered on 27th March 2025 in Nakuru High Court Succession Cause No. E028 of 2022 pending the hearing and determination of the appeal;
  - b. That this Honourable Court be pleased to issue an order conserving the entire estate of the late Thomas Martin Kibisu (Deceased) pending the hearing and determination of the appeal;
2. The brief background to this application is that the applicant, together with Robert Tom Martins Kibisu and Yuster Chavaga Thomas, were granted Letters of Administration Intestate on 12th September 2022 in respect of the estate of the late Thomas Martin Kibisu (deceased).
3. On 27th February 2023, the respondent filed an objection to the said grant, claiming that she and her four siblings; Hellen Kibisu, Raphael Kibisu, Peter Mbuthia Kibisu, and the late Amos Kibisu were dependants of the deceased within the meaning of Section 29 of the *Law of Succession Act*, yet the petitioners had deliberately excluded them from the petition for grant of letters of administration.



4. The matter proceeded to hearing on viva voce evidence. After considering the evidence and submissions, the learned Judge delivered a ruling on 27th March 2025 making the following findings and orders:
  - i. That the petitioners failed to properly identify all the beneficiaries of the estate thus failing to make full disclosure. The deceased had married three times, and had children with the 1st wife and the 2nd wife has five children who may or may not have been sired by the deceased. It was not mentioned whether the deceased sired any children with the 3rd wife.
  - ii. That the confirmation of the grant of letters of administration intestate can only be contemplated after all the deceased's survivors have been brought on board;
  - iii. That the deceased had three (3) houses, and therefore the three (3) houses must be represented in the succession cause;
  - iv. That the grant of letters of grant of Administration issued on 12th September 2022 be revoked;
  - v. That a fresh grant of letters of Administration issue in the names of Robert Tom Martins Kibisu, Daurice Chedeye Kibisu, Yuster Chagava Thomas, and Lucy Wanjiru Kibisu;
  - vi. That summons for confirmation of grant be filed and shared by the administrators within 60 days from the date of the ruling.
  
5. Aggrieved by the said ruling, the applicant lodged a Notice of Appeal on 3rd April 2025. The instant application now seeks to stay the execution of that ruling pending the determination of the appeal. It is premised on the following grounds:
  - i. That the appeal raises serious arguable grounds, including whether the learned Judge erred in finding that the respondent was a dependant within the meaning of Section 29 of the [Law of Succession Act](#) despite the absence of any legal, biological, or statutory basis;
  - ii. That the learned Judge erred in entertaining and allowing a dependency claim when no formal application for dependency was made under Sections 26 and 29 of the Act;
  - iii. That the learned Judge misapplied the definition of child under Section 29(b) of the [Law of Succession Act](#) to include persons who were neither legally adopted, fostered, nor biologically related to the deceased;
  - iv. That the intended appeal will be rendered nugatory if the stay of proceedings is not granted, as the estate may proceed to distribution, including to parties who have no lawful claim to the estate;
  - v. That the respondent and her siblings have already filed a mode of distribution vide a letter dated 22nd May 2025 demanding distribution of the estate;
  - vi. The estate may proceed to distribution, including to parties who have no lawful claim to the estate; which may lead to irreversible consequences such as intermeddling with the estate and third-party transfers, thus complicating or defeating the purpose of the appeal.
  - vii. That no prejudice will be occasioned to the respondent if the stay is granted, whereas the applicant and the estate stand to suffer substantial loss if the stay is denied; and
  - viii. That the balance of convenience and the interests of justice favour the grant of a stay to preserve the estate pending the outcome of the appeal.



6. In opposing the application, the respondent contends through written submissions that the application does not meet the legal threshold for granting a stay of proceedings; the intended appeal is not arguable, and the applicant has failed to prove sufficient cause that the stay of proceeding is necessary.
7. Specifically, it was contended that the applicant's reliance on Luhya customary law to exclude the respondent and her siblings is repugnant to justice and morality and should be rejected, that the respondent has already suffered prejudice by being excluded from the grant since September 2022 and that the balance of convenience favours the respondent, who has waited over three years for her rights to be recognized.
8. We have considered the application, submissions by counsel and the law. whenever we are faced with an application under Rule 5(2)(b), such as in this case, we have to satisfy ourselves that the applicant has demonstrated that they have an arguable appeal or an appeal that is not frivolous, and also that if the orders sought are not granted, the intended appeal will be rendered nugatory, if it eventually succeeds. See *Reliance Bank Ltd. (in liquidation) vs. Norlake Investments Ltd.* [2002] 1 EA 227. The applicant is obliged to satisfy both of those principles; it is not enough to satisfy only one of them. See *Peter Paul Mburu Ndururi vs. James Macharia Njore* [2009] eKLR.
9. The first limb of the test for granting a stay is whether the intended appeal raises serious, arguable grounds that deserve consideration by this Court. An arguable appeal is not one that must necessarily succeed, but one that raises one or more bona fide questions deserving judicial examination, as set out by this Court in *Stanley Kangethe Kinyanjui v Tony Ketter & 5 Others* [2013] eKLR.
10. In our view, whether the Learned Judge erred in finding that the respondent qualified as a dependant of the deceased within the meaning of section 29 of the Law of Succession and whether the learned Judge erred in entertaining a dependency claim when no application for dependency was made under Sections 26 and 29 of the *Law of Succession Act*, are issues worth consideration before this Court.
11. Turning to the second prerequisite, which is the nugatory aspect; that is, whether the appeal, if successful, would be rendered nugatory in the event we decline to grant the orders sought and the intended appeal succeeds, we are guided by the sentiments of this court in *Stanley Kang'ethe Kinyanjui v Tony Ketter & 5 others* [2013] eKLR this court stated that:
  - “ix) The term “nugatory” has to be given its full meaning. It does not only mean worthless, futile or invalid. It also means trifling
  - x). Whether or not an appeal will be rendered nugatory depends on whether or not what is sought to be stayed if allowed to happen is reversible; or if it is not reversible whether damages will reasonably compensate the party aggrieved.”
12. Applying this test to the present case, we are not satisfied that the appeal will be rendered nugatory, for the following reasons. First, there is no evidence that distribution is imminent. The High Court's ruling of 27th March 2025 did not order immediate distribution. Rather, it revoked the original grant; ordered a fresh grant to issue in the names of all four administrators (including the respondent), directed that summons for confirmation be filed within 60 days and set the matter for mention on 31st July 2025. On 31st July 2025, the High Court stayed its own proceedings pending the determination of this application. The applicant's concerns about imminent distribution are speculative at best.
13. Second, a grant of letters of administration is not irreversible.



Should the appeal succeed on the procedural grounds raised in in the Memorandum of appeal, any fresh grant issued pursuant to the impugned ruling can be revoked under Section 76 of the [Law of Succession Act](#).

14. In the end, we are not persuaded that the applicant has demonstrated any basis to merit the order of stay of further proceedings as prayed. Accordingly, having failed to satisfy the twin principles to qualify for an order of stay of the proceedings, the application must fail and is dismissed with costs.

**DATED AND DELIVERED AT NAKURU THIS 11<sup>TH</sup> DAY OF DECEMBER, 2025.**

**M. WARSAME**

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**JUDGE OF APPEAL**

**J. MATIVO**

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**JUDGE OF APPEAL**

**M. GACHOKA CIARB., FCIARB**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

Signed.

**DEPUTY REGISTRAR**

