



**In re Estate of Kimani Kamau (Deceased) (Family Appeal E011 of 2025)
[2025] KEHC 18916 (KLR) (18 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18916 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
FAMILY APPEAL E011 OF 2025
FN MUCHEMI, J
DECEMBER 18, 2025
IN THE MATTER OF THE ESTATE OF KIMANI KAMAU (DECEASED)**

BETWEEN

PAUL NG'ANG'A KIMANI APPLICANT

AND

MARION NJERI KIMANI 1ST RESPONDENT

EZEKIEL KAMAU KIMANI 2ND RESPONDENT

ZAKAYO KIRURI KIMANI 3RD RESPONDENT

RULING

1. The application dated 19th September 2025 seeks for orders of stay of execution in respect of the ruling in Thika CM Succession Cause No. 83 of 1994 delivered on 10th July 2025. It further seeks to stay the Amended grant issued on 14th August 2024 pending the hearing and determination of the appeal.
2. In opposition to the application, the 1st respondent filed a Replying Affidavit dated 4th November 2025.

Appellant/Applicant's Case

3. The applicant states that he is a son and beneficiary of the deceased's estate and was allotted all that piece of land known as Loc 4/Kaguthi/729 together with Priscilla Waithira Kimani (deceased) as per the confirmed grant dated 7th May 2008. The applicant further states that in August 2024, the 1st and 2nd respondents sought to amend the letters of administration and subsequently confirmed the grant in the estate herein without his knowledge or consent. Subsequently, the applicant moved the trial court vide application dated 16th October 2024 whose ruling was delivered on 10th July 2025.
4. The applicant states that the trial court opined that his consent was indispensable in the proceedings carried out between the 1st and 2nd respondents but the trial court could not review the said orders nor



sit on appeal. The applicant argues that unless the orders sought are granted, he stands to suffer harm as they will get a lesser share compared to the other beneficiaries without recourse available to them in law and contrary to the law on equality.

5. The applicant further states that the resultant grant issued on 14th August 2024 and the amended confirmed grant, have listed properties and beneficiaries unknown to him and without his consent. Further, the 1st and 2nd respondents have left him out as a beneficiary in the said grant.

The 1st Respondent's Case

6. The 1st respondent states the applicant was served with her application for revocation dated 27th November 2023 but he opted not to respond. It is only the 2nd respondent who filed a replying affidavit sworn on 26th July 2024 to which she responded by filing a supplementary affidavit dated 7th August 2024, the subject matter of the consent dated 14th August 2024.
7. The 1st respondent avers that the earlier grant was erroneous and the applicant should have followed up with the court to have the error corrected. The 1st respondent states that after the consent, the court issued an amended grant of letters of administration issued on 14th August 2024 and an amended certificate of confirmation. The amended grant took into account all the beneficiaries of the deceased and each of them was provided for unlike in the previous grant that had left her out and a sister, one Peris Wambui Kimani (deceased) and the mother to Peter Kimani Wambui.
8. Parties disposed of the application by way of written submissions.

The Applicant's Submissions

9. The applicant relies on the cases of *Re Estate of Richard Kigondu Kigera (Deceased) (Succession Cause 192 of 2013 & 114 of 2022 (Consolidated) [2024] KEHC 16277 (KLR) (19 December 2024) (Ruling)* and *Re Estate of Mridulla Kishor Makwana (Deceased) (Succession Cause E256 of 2023) [2025] KEHC 759 (KLR) (Family) (31 January 2025) (Ruling)* and submits that the instant application has been filed timeously as it was filed on 23rd September 2025 and the impugned ruling was delivered on 10th July 2025. Further, he shall suffer substantial loss as the grant will be executed and sub division effected against the suit property despite the fact that his consent and those of other beneficiaries was not procured. The applicant argues that they were not a party to the proceedings in the lower court that resulted in the impugned ruling as they were not served with the pleadings from the 1st respondent that resulted in the revocation and subsequent amendment of the grant of letters of administration and amended confirmed grant.
10. The applicant submits that in the 1st respondent's replying affidavit dated 4th November 2025, she has annexed an affidavit of service which purports to have effected service on him but the same is defective for not having complied with Section 5 of the *Oaths and Statutory Declarations Act*.
11. The applicant further submits that the 1st respondent has not reproduced the alleged consent that was adopted as an order of the court and the same consent bearing all the listed beneficiaries to the estate. Furthermore, the 1st respondent by her own admission in her replying affidavit has disclosed that it is only her and the 2nd respondent who were parties to the alleged consent notwithstanding that there are more than four beneficiaries to the estate of the deceased.
12. The applicant submits that he is not opposed to the 1st respondent being listed as a beneficiary to the estate of the deceased but he has an issue with the new distribution of the estate which is unequitable and was done without his consent and that of other beneficiaries.



The 1st Respondent's Submissions

13. The 1st respondent submits that the fresh grant issued on 14th August 2024 gave the suit land parcel to the applicant and one Peter Kimani Wambui to share equally and thus the applicant's share in the estate has not been interfered with. Furthermore, the allegation that the applicant was not listed as a beneficiary in the fresh grant is totally misleading and is not true. The 1st respondent argues that the applicant was served with her application dated 27th November 2023 but he chose not to respond and a return of service was duly filed. Thus, having been served, the applicant cannot turn around and allege that his consent was not sought.
14. Relying on the case of *RWN v EKW (2019) eKLR*, the 1st respondent argues that the applicant has not demonstrated what substantial loss he stands to suffer if orders of stay are not granted. His share of the estate as given in the original grant of 2008 remains intact and he is not likely to suffer any prejudice. Further, the 1st respondent relies on the decision in *Kaushik Panchamatia & 3 Others v Prime Bank Limited & Another (2020) eKLR* and submits that the orders issued on 10th July 2025 simply dismissed the application dated 16th October 2024 and are therefore negative orders and are incapable of being stayed.

The Law

Whether the applicants have satisfied the conditions set out for stay of execution pending appeal

15. Section 47 of the *Law of Succession Act* gives the court jurisdiction to entertain any application such as the present one which seeks to preserve the status quo pending the appeal. Order 42 Rule 6(2) of the Civil Procedure Rules lays down the conditions which a party must establish in order for this court to order stay of execution. These conditions are:-
 - a. Substantial loss may result to him/her unless the order is made;
 - b. That the application has been made without unreasonable delay; and
 - c. The applicant has given such security as the court orders for the due performance of such decree or order as may ultimately be binding on him.
16. These principles were enunciated in *Butt v Rent Restriction Tribunal [1979]* the Court of Appeal stated what ought to be considered in determining whether to grant or refuse stay of execution pending appeal. The court said that:-
 1. The power of the court to grant or refuse an application for a stay of execution is discretionary; and the discretion should be exercised in such a way as not to prevent an appeal.
 2. Secondly, the general principle in granting or refusing a stay is, if there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should the appeal court reverse the judge's discretion.
 3. Thirdly, 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.
 4. Finally, the Court in exercising its discretion whether to grant or refuse an application for stay will consider the special circumstances and its unique requirements. The court in exercising its powers under Order XLI Rule 4(2) (b) of the Civil Procedure Rules, can order security upon



application by either party or on its own motion. Failure to put security of costs as ordered will cause the order for stay of execution to lapse.

17. On the issue of substantial loss, the case of *Re Estate of Wanga Ole Oiyie* [2022] eKLR Gikonyo J. relied on the case of *James Wangalwa & Another v Agnes Naliaka Cheseto* [2012] eKLR where the court held:-

The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the applicant as the successful party in the appeal...the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.

18. The applicant states that he stands to suffer substantial loss as he will get a lesser share of the estate compared to the other beneficiaries and yet he was not consulted on the fresh grant. The applicant further argues that the grant issued on 14th August 2024 has listed properties and beneficiaries that are unknown to him and without his consent. The 1st respondent argues that she filed and served the applicant with the summons for revocation which resulted to the grant issued and amended on 14th August 2024, thus he was aware of the proceedings but chose not to attend the same. I have perused the record and noted that the grant herein was issued on 12th September 2000 and confirmed on 7th May 2008. The 1st respondent herein filed summons for revocation of grant dated 27th November 2023 and the same was opposed by the applicant and 2nd and 3rd respondents through their respective replying affidavits dated 22nd April 2024 and 26th July 2024 and 22nd April 2024 respectively. On 14th August 2024, parties compromised the application by recording a consent allowing the grant to be revoked and afresh grant issue to the 2nd respondent and the grant on distribution be amended as per the 1st respondent's further affidavit dated 7th August 2024. Looking at the coram, it is evident that all the beneficiaries were not present or represented when the consent was made which is supported by the 3rd respondent's application dated 19th August 2024 filed immediately after seeking to expunge the consent adopted by the court on the grounds that he logged into the virtual court but was unable to address the court as he was experiencing technical difficulties. Thus it is evident that not all the beneficiaries were present in court or represented by counsels at the time the consent was entered into and adopted. It is trite law that all beneficiaries be involved in the confirmation of grant or in any other summons. The applicant argues that he stands to be disinherited from his share of land parcel number Loc 4/Kaguthi/729. It is evident that since the applicant and the other beneficiaries ought to have participated during the proceedings as the mode of distribution was altered without their consent. It is therefore my considered view that the applicant has demonstrated that he stands to suffer substantial loss.

19. This application was filed on 22nd September 2025 and the ruling was delivered on 10th July 2025, which is a period of two months.

It is my considered view that a delay of two months is not inordinate.

20. On the issue of security, it is trite law that security is discretionary and it is upon the court to determine it as well as the terms that may be appropriate. Notably, the applicant has not offered any terms of security to warrant the application for stay.

21. Additionally, grant of stay being a discretionary order, the court is expected to balance out the interests of the successful litigant and the applicant's unfettered right to file an appeal to fully ventilate his grievances. This was well stated in the case of *M/s Porteitiz Maternity v James Karanga Kabia* Civil Appeal No. 63 of 1997 where the court held:-



That the right of appeal must be balanced against an equally weighty right, that of the plaintiff to enjoy the fruits of the judgment delivered in his favour. There must be a just cause for depriving the plaintiff of that right.

22. Bearing the said balance in mind and considering the provisions of Order 42 Rule 6 of the Civil Procedure Rules, it is my considered view that the applicant has met the threshold of granting stay of execution pending appeal. Furthermore, I have perused the grounds of appeal and without going into the merits of the appeal noted that they raise arguable points of law.
23. Accordingly, it is my considered view that the application dated 19th September 2025 has merit and it is hereby allowed in the following terms: -
 - a. That stay of execution of Thika CM Succession Cause No.83 of 1994 is hereby granted pending hearing and determination of the appeal.
 - b. The orders of the Amended grant issued on 14th August 2024 are hereby stayed pending hearing and determination of this appeal.
24. That this being a family matter, each party to meet their own costs of this application.
25. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 18TH DAY OF DECEMBER 2025.

F. MUCHEMI

JUDGE

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