



Kirima & another v Kirima & 13 others (Civil Application E152 of 2025) [2025] KECA 2312 (KLR) (19 December 2025) (Ruling)

Neutral citation: [2025] KECA 2312 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E152 OF 2025
DK MUSINGA, F TUIYOTT & P NYAMWEYA, JJA
DECEMBER 19, 2025**

BETWEEN

TERESIA WAIRIMU KIRIMA 1ST APPLICANT

ALICE NJERI KIRIMA 2ND APPLICANT

AND

ANNE WANGARI KIRIMA 1ST RESPONDENT

**THE ADMINISTRATORS OF THE ESTATE OF FREDRICK KAMAU KIRIMA
(DECEASED) 2ND RESPONDENT**

**THE ADMINISTRATORS OF THE ESTATE OF SAMUEL NDEI KIRIMA
(DECEASED) 3RD RESPONDENT
STEPHEN KAMAU KIRIMA
(DECEASED) 3RD RESPONDENT**

STEPHEN KAMAU KIRIMA 4TH RESPONDENT

IRENE NJERI KIRIMA 5TH RESPONDENT

WANJAU KIRIMA 6TH RESPONDENT

MARIA NJERI KIRIMA 7TH RESPONDENT

**THE ESTATE OF THE LATE AGNES WARGURU KIRIMA
(DECEASED) 8TH RESPONDENT**

**THE ADMINISTRATORS OF THE ESTATE OF ELIZABETH WANJIKU
KIRIMA (DECEASED) 9TH RESPONDENT**

ANNE WANGARI KIRIMA 10TH RESPONDENT

JANE KIRIMA 11TH RESPONDENT

RUTH WANJA KIRIMA 12TH RESPONDENT



MARGARET WANJIRU KIRIMA 13TH RESPONDENT

SUSAN WANGARI KIRIMA 14TH RESPONDENT

(Being an application for stay of execution of the Judgment of the High Court of Kenya at Nairobi (Nyaundi, J.) delivered on 21st February 2025 in Succession Cause No. 1298 of 2011)

RULING

1. Before this Court is an application dated 12th March 2025 in which the applicants seek a stay of the judgment and orders issued by Nyaundi, J. in HCSC No. 1298 of 2011 on 21st February 2025 revoking the grant of letters of administration issued to Anne Wangari Kirima and Teresia Wairimu Kirima pending hearing and determination of an intended appeal; and appropriate orders to preserve the subject matter of the intended appeal.
2. The dispute in this appeal concerns the distribution of the estate of the late Gerishon Kamau Kirima. On 30th October 2013 the High Court (Lenaola J.), (as he then was) appointed Teresia Wairimu Kirima (widow of the deceased) and Anne Wangari Kirima (daughter of the deceased) as joint administrators in Succession Cause No. 1298 of 2011. Anne Wangari Kirima later filed summons for confirmation of the grant on 23rd May 2017 seeking confirmation and distribution of the estate. Around the same time, Catherine Wanjiru Aura filed a separate application dated 20th June 2017 seeking recognition as a dependant of the deceased and claiming entitlement to certain properties alleged to have been gifted to her inter vivos. Those two applications formed the basis of the judgment now under appeal.
3. The summons for confirmation identified the beneficiaries, listed the estate assets, and proposed a mode of distribution, while noting that some properties were occupied, disputed, partly distributed or alleged to have been intermeddled with. Several beneficiaries filed affidavits of protest challenging the proposal, contesting alleged inter vivos gifts, and raising concerns about management of estate income, treatment of assets held under companies or trusts and unequal access to rental proceeds. Several witnesses later gave oral testimony reflecting similar points of contention, particularly regarding gift claims, dependants, the status of assets held in corporate or trust structures, outstanding liabilities and allegations of intermeddling.
4. In its judgment delivered on 21st February 2025, the trial court rejected Catherine Aura's claim to be recognized as a dependant on the basis that she did not fall within the closed categories under section 29 of the *Law of Succession Act* and had only been an employee and relative of the deceased.
5. As to who the beneficiaries of the estate are, the court confirmed that the consent of 30th October 2013 settled the issue of beneficiaries and remained binding. The beneficiaries as per the said consent are Teresia Wairimu Kirima, Alice Njeri Kirima, the estate of Fredrick Kamau Kirima, the estate of Samuel Ndei Kirima, the estate of Elizabeth Wanjiku Kirima, Stephen Kamau Kirima, Irene Njeri Kirima, Wanjau Kirima, the estate of the late Agnes Waruguru Kirima, Maria Njeri Kirima, Anne Wangari Kirima, Jane Kirima, Ruth Wanja Kirima, Margaret Wanjiru Kirima and Susan Wangari Kirima. The court also held that the consent order provided for the reasonable provision of Grace Warwathia Kamau at the time of distribution of the Estate to cater for her living expenses for her life time.
6. Regarding the assets forming part of the deceased's estate, the court held that properties registered in the name of the Kirima Trust were not part of the estate because the trust is a distinct legal entity and its affairs are currently being litigated. It reached the same conclusion in respect of properties registered in the name of Kirima & Sons Limited and Kenda Limited, noting that issues relating to incorporation,



registration and transfer fall outside probate jurisdiction and are the subject of pending litigation. The court also excluded assets held solely in the name of Agnes Kirima. The assets found to constitute the estate included several developed and undeveloped properties in Nairobi, shares in jointly held titles such as LR 209/1836, LR 209/4348 and LR 209/2389/165, various motor vehicles, company shares attributable to the deceased, anticipated compensation for compulsory acquisitions and funds held in various bank accounts.

7. On gifts inter vivos, the court held that any gift made during the deceased's lifetime must meet the legal threshold under sections 28 and 42 of the *Law of Succession Act* and relevant case law. A valid gift required a completed transfer during the donor's lifetime through registered conveyance, written documentation or a perfected declaration of trust. An incomplete intention to gift was insufficient because equity does not assist a volunteer. Applying these principles, the court rejected Catherine Aura's gift claims, finding that the alleged parcels were either not owned by the deceased at the material time, or had never been lawfully transferred.
8. On the issue of provision for Grace Warwathia, the court maintained the earlier consent requiring her reasonable upkeep and confirmed she should benefit during her lifetime. It held that a lumpsum payment of Kshs 54,000,000 was sufficient. In the alternative, the administrators were to allocate to her a property whose value is equal to Kshs 54 Million.
9. The court also addressed the issue of intermeddling with the deceased's estate and found that various beneficiaries had collected rent from estate properties without depositing it into the estate account. It held that this conduct could not be ignored and that those found to have handled rental income must account to the administrators under section 45 of the *Law of Succession Act*.
10. On whether the grant should be confirmed, the court found merit in the objections against Teresia Wairimu Kirima. According to the court, her persistent refusal to comply with court orders, including those recorded by consent on 8th December 2020, demonstrated her unsuitability to continue as administrator. The court also observed that the Deputy Registrar has had to execute documents in her place which should not be necessary where an administrator is diligent. It gave Anne Wangari Kirima the benefit of doubt to continue serving as an administrator and appointed Stephen Kirima and Anne Wangari Kirima as the new administrators of the estate.
11. Finally, on distribution, the court observed that the parties had previously agreed to equal distribution among all the beneficiaries and that this principle would guide the final division. However, because significant liabilities remained unresolved, including unpaid rent, anticipated legal fees and other estate expenses, and because valuations and final accounts had not been completed, the learned judge deferred confirmation of the grant and postponed final distribution. The administrators were directed to clarify the full extent of liabilities and submit a revised and supported distribution proposal.
12. Being aggrieved and dissatisfied with the decision of the High Court, the applicants intend to lodge an appeal against the whole of the said decision as evinced in the Notice of Appeal dated 6th March 2025.
13. In this application, which is supported by an affidavit sworn by Teresia Wairimu Kirima, the applicants contend that the intended appeal is arguable and has high chances of success. In the draft memorandum of appeal annexed to the affidavit in support of the application, the grounds in support thereof include among others, that the learned judge erred in law and in fact: by finding that the estate of Agnes Waruguru is a beneficiary of the estate of the late Gerishon Kamau Kirima despite her not surviving him; by revoking the grant previously issued by Lenaola, J. (as he then was) in a manner they argue amounted to sitting on appeal over a concurrent court's decision; by making findings relating to the management and rent collection over L.R Nos. 13763, 13764, 13765 and 13766 (Tumaini Estate) and holding that Teresia Wairimu Kirima had intermeddled with the estate, despite a finding that she lacked



jurisdiction to distribute the said properties; by venturing into commercial and corporate matters belonging to Kirima & Sons Limited which fell outside succession jurisdiction; by removing Teresia Wairimu Kirima as an administratrix despite evidence that she was handling repairs, management and preservation of estate assets; by appointing Stephen Kamau Kirima as an administrator without justification or pleadings to support such substitution.

14. Other grounds of appeal are that the learned judge erred in law and in fact by wrongly finding that Teresia Wairimu Kirima intermeddled by not depositing 40% of rent into the estate account notwithstanding the corporate structure of Kirima & Sons Limited that already required accounting at the end of the financial year; by treating proceeds of Kirima & Sons Limited rent as estate income contrary to company law and procedure; by contradicting and effectively overturning the ruling of Maraga, J. (as he then was) made on 21st October 2011 regarding the 40% rent issue; by finding that L.R. No. 3734/264 Convent Drive, Lavington was available for distribution despite lack of evidence that the deceased ever owned it; by revoking the grant issued to Teresia Wairimu Kirima without notice; by appointing Stephen Kirima as an administrator despite absence of citations and despite his status as an alleged intermeddler in possession of vehicles and equipment registered in the name of the deceased; and by misapplying the law in determining the summons for confirmation of grant dated 23rd May 2017.
15. On the nugatory aspect, it is contended that following the delivery of the impugned judgment, the newly appointed administrators have commenced implementing far-reaching actions such as terminating long-serving estate employees without due process and publishing a newspaper notice that publicly maligns the 1st applicant, while warning tenants against transacting with her, actions she contends have destabilized management systems that have existed for decades and caused fear and confusion among tenants and workers, thereby creating a real risk of disorder and financial loss if no stay is granted. She further contends that the learned judge issued consequential directions that amount to execution of the judgment, implying that without intervention, the substratum of the appeal will be extinguished and the appeal rendered nugatory, academic and overtaken by events. It is further contended that the estate comprises income-generating rental properties which require continuity, orderly management and protection during the pendency of the appeal and therefore, maintaining the status quo through stay will preserve the subject matter and avoid irreversible harm without prejudicing the respondents.
16. The application is opposed through several replying affidavits filed by different respondents. Anne Wangari Kirima, a co-administratrix, swore three replying affidavits in her various capacities opposing the motion. In the first affidavit dated 28th March 2025, she attributes the prolonged delay in administering the estate to the 1st applicant's conduct, including persistent non-compliance with court orders, refusal to account, and unilateral control of income from the Tumaini properties after allegedly converting Kirima & Sons from a partnership into a limited company without authority. She avers that since the judgment of 21st February 2025, she and Stephen Kirima have taken steps to regularize estate management and redirect rental income into the estate account but the 1st applicant has resisted through intimidation, violence and continued rent collection. She asserts that the current application is meant to preserve the 1st applicant's personal control over estate income rather than protect the estate. She therefore avers that the stay application is brought in bad faith, would delay distribution, and is contrary to the interests of beneficiaries.
17. In her second affidavit sworn on 27th March 2025 as a trustee of the Kirima Trust, she avers that the stay application is an attempt to undo the judgment under the guise of interim relief, lacks merit, and is premised on speculative claims of prejudice. She maintains that widowhood does not confer superior administrative priority and the High Court's decision was based on a long history of her



misconduct. She also asserts that the issues raised in the application regarding termination of employees and publication of notices do not justify stay, as termination disputes are separate causes of action and the notices simply reflect lawful administrative changes. She contends that the applicants have not shown an arguable appeal or demonstrated substantial loss they stand to suffer. She avers that orders requiring valuation of liabilities, identification of trust assets, and compliance timelines do not prejudice the applicants but instead facilitate orderly administration.

18. In her third affidavit sworn on 11th April 2025 in her capacity as one of the administrators of the estate of Agnes Waruguru Kirima, she depones that the applicants have not met the legal threshold for the orders sought. She reiterates that the High Court judgment issued on 21st February 2025 included a factual finding that the first applicant had intermeddled with the estate and that the said judgment was intended to safeguard the estate. She further avers that no prejudice will arise if stay is not granted, and argues that the applicants are seeking equitable relief without clean hands. She maintains that the issues at hand relate to the proper management, accounting and handling of assets and liabilities which the 1st applicant failed to carry out during her tenure as an administrator. She asserts that granting the stay would not serve the interests of justice.
19. Stephen Kirima, a co-administrator appointed under the impugned judgment, also opposes the application. He avers that the 1st applicant's removal followed years of disobedience of court orders, diversion of estate income, and refusal to sign documents. He asserts that she continues to collect rent despite being removed, and argues that reinstating her would undermine ongoing administration and prejudice beneficiaries. He adds that security measures had to be instituted because of her continued interference
20. The 6th respondent, Wanjau Kirima, also opposes the application and asserts that the motion lacks merit, is frivolous and amounts to an abuse of process. He avers that the applicants have not approached the Court with clean hands, given that the 1st applicant persistently disobeyed court orders during the succession proceedings, failed to preserve the estate and engaged in conduct contrary to her duties as an administrator. He outlines several allegations against the 1st applicant, including fraudulently converting the Kirima & Sons partnership into a company without consultation, allocating herself shares, failing to remit statutory taxes, and continuing to unlawfully collect rent from estate properties despite court directions. He also states that she repeatedly ignored orders requiring the opening of an escrow account for proceeds of certain land transactions and refused to cooperate in managing the estate finances.
21. He maintains that the trial court acted correctly in removing the 1st applicant as an administrator to protect the estate and safeguard beneficiaries' interests, noting that she continued to interfere with tenancy arrangements and intimidate tenants even after her removal. He further avers that the applicants have not demonstrated what loss they have suffered so far from the date of the judgement despite there being no stay orders in place. In addition, that the applicants have no demonstrated that they have an arguable appeal.
22. Jane Kirima, the 11th respondent, similarly opposes the application. She contends that the 1st applicant was previously appointed as an administrator but removed after repeatedly disobeying court orders, refusing to sign necessary documents and failing to provide accounts. She maintains that the application is premature, does not satisfy the rule 5 (2) (b) threshold, and is intended to delay the matter, stressing that the estate has yet to be distributed and the applicants remain beneficiaries regardless of the administrators in place. She asserts that granting a stay would stall progress and perpetuate mismanagement.



23. At the hearing hereof, learned counsel Mr. Nyamu appeared for the applicants. Learned counsel Mr. Musyoka held brief for learned counsel Mr. Munge on behalf of the 1st and 14th respondents, while learned counsel Mr. Mwangi represented the 2nd respondent and held brief for learned counsel Mr. Maruti for the 3rd respondent. Learned counsel Ms. Achieng held brief for learned counsel Mr. Ataka for the 6th respondent. Senior Counsel Jan Mohammed appeared for the 7th respondent, while Senior Counsel Dr. Ojiambo appeared with learned counsel Mr. Wasonga for the Kirima Trust. Learned counsel Mr. Evans Ondieki appeared together with learned counsel Mrs. Wambugu and learned counsel Prof. Aketch for the 11th respondent. The 12th respondent, Ruth Kirima, appeared in person. Save for Mr. Mwangi who left the application to the Court, the other counsel made brief oral highlights in support of their respective client's written submissions. The oral arguments largely mirrored the positions already canvassed in the affidavits as summarized hereinabove. We shall therefore not rehash them, save for only brief reference to a few critical issues.
24. Mr. Nyamu contended that leave to appeal had been sought and granted by the trial court, but the record of appeal is yet to be filed because typed proceedings and extracted orders have not been supplied despite repeated formal requests. He maintained that the intended appeal is arguable and meets the principles articulated in *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 Others* [2014] eKLR. On the nugatory limb, he argued that implementation of the judgment is already underway, including termination of long-serving employees and takeover of estate assets and submitted that without a stay the appeal would be rendered academic.
25. On his part, Mr. Musyoka contended that the application is incurably defective because leave to appeal was neither sought nor granted, which is a mandatory requirement under section 50 of the *Law of Succession Act*, citing the decision of this Court in *Rhoda Wairimu Karanja & Another v Mary Wangui Karanja & Another* [2014] KECA 255 (KLR). On the merits, he contended that the intended appeal is not arguable, noting that the High Court expressly found the 1st applicant to have intermeddled with the estate and failed to account for substantial income. On the nugatory test, he contended that staying the impugned judgment would destabilize the estate which is currently being administered by two court-appointed administrators who have been operating without major conflict except resistance from the 1st applicant. He cautioned that reinstating her would revive mismanagement, exacerbate tensions and hinder proper administration.
26. Ms. Ochieng on her part contended that the test on arguability and nugatory aspect as set out in the decision of *Trust Bank Limited and Another v Investech Bank Limited & 3 Others* [2000] eKLR had not been satisfied. On the nugatory limb, it was contended that the applicants have not demonstrated any real or identifiable prejudice they would suffer if stay is denied.
27. On her part, Jan Mohammed, SC, contended that the intended appeal is neither arguable nor capable of satisfying the nugatory test. She submitted that the 1st applicant's reliance on the issue of a deceased beneficiary is selective and inconsistent, noting that the applicant's own late son benefited from the estate without objection. Counsel emphasized that the High Court has not yet engaged in distribution but only directed the current administrators to gather information, identify assets and liabilities, and later present a proposed mode of distribution. She submitted that the 1st applicant failed to provide any accounts during her tenure as administrator, despite repeated requests which undermines her suitability to return to that role. On stay, she argued that granting the orders sought would create a legal vacuum because the impugned judgment revoked the previous grant and appointed new administrators. Therefore, staying the impugned judgment would leave the estate without lawful management and interrupt ongoing administrative work. She added that the applicants have not demonstrated any prejudice that they stand to suffer as they remain beneficiaries, regardless of



who administers the estate and the current steps are limited to information gathering under court supervision.

28. Dr. Fred Ojiambo, SC, contended that the intended appeal is not arguable because one of the key reasons for removal of the 1st applicant as an administrator was her persistent and blatant disregard of court orders and her treatment of estate assets as if they were her personal property, despite the existence of a co-administrator. Counsel submitted that the appeal raises no point of law capable of serious consideration, noting that there is no automatic legal right for a widow to be appointed as an administrator as appointments are made at the discretion of the court based on suitability and the circumstances. On the nugatory aspect, it was contended that the intended appeal cannot be rendered nugatory because the current administrators remain subject to court supervision and are only required to collect and present estate information to enable proper distribution. Counsel asserted that the balance of convenience strongly favors maintaining the status quo rather than reinstating someone who has repeatedly ignored court authority and mishandled estate property.
29. Mr. Ondieki and Mrs. Wambugu contended that the application has no merit and should be dismissed, noting that the 1st applicant repeatedly disobeyed court orders and has delayed the administration of the estate for over fifteen years, thereby depriving beneficiaries of their entitlement. Counsel also submitted that the High Court had already directed the current administrators to account and report on the estate, and thus submitted that granting a stay would paralyze this ongoing process.
30. We have considered the application, the affidavits, the rival submissions and the law. It is trite law that in applications of this nature the applicant must demonstrate, first, that the intended appeal is arguable, and secondly, that unless the orders sought are granted, the appeal, if successful, will be rendered nugatory. See *Stanley Kang'ethe Kinyanjui v Tony Ketter & 5 Others* [2013] eKLR.
31. Before we pronounce ourselves on the merits of this application, it is necessary to address an issue that was raised regarding the omission of the Kirima Trust as a respondent. The record shows that the Trust actively participated in the High Court proceedings and even filed written submissions dated 6th February 2025. The impugned judgment was also delivered in the presence of among others, counsel said to be holding brief for Dr. Ojiambo, SC for Kirima Trust. It follows therefore that Kirima Trust was a substantive party who ought to have been included as a respondent in this application. We therefore direct the Trust's inclusion in the intended appeal and in any other proceedings emanating from the judgment delivered by the High Court on 21st February 2025.
32. As regards the issue of arguability of the intended appeal, the law is settled that an arguable appeal is not one that must ultimately succeed, but one that raises at least a single bona fide issue worthy of full consideration on appeal. The applicants through their draft memorandum of appeal challenges several substantive findings of the High Court, including whether the estate of a predeceased beneficiary can lawfully be included in the list of beneficiaries on the basis of a consent, the legal effect of earlier rulings relating to company-held assets, and whether the High Court properly exercised its discretion in revoking the grant and appointing a new administrator in the absence of prior pleadings or notice. These issues are, in our view, neither frivolous nor superficial. They require interrogation on appeal. In that regard, the applicants have demonstrated that the intended appeal is arguable.
33. Turning to the nugatory aspect, this Court stated in *Stanley Kang'ethe Kinyanjui v Tony Ketter & 5 Others* (supra) that whether or not an appeal will be rendered nugatory depends on whether what is sought to be stayed if allowed to happen is reversible; or if it is not reversible, whether damages will reasonably compensate the aggrieved party.



- 34. We are not satisfied that the intended appeal will be rendered nugatory if stay is not granted. In stating so, we note that the impugned judgment has not yet resulted in the distribution of the estate. The record shows that the newly appointed administrators were only directed to present a final report of all liabilities of the estate within six months from the date of the order, prepare a comprehensive account detailing the cost or loss occasioned by intermeddling, and within eighteen months submit a revised proposal for distribution of the net estate after settling liabilities, factoring in any gifts and documented intermeddling by beneficiaries. They were further required to ensure that all rental income generated from estate property is deposited into the designated estate accounts. In our view, the estate remains intact and no irreversible steps affecting ownership or substantive rights have been shown. In addition, the applicants remain as recognized beneficiaries and their entitlement is not dependent on their role in administration of the estate. Therefore, the interruption of their administrative roles, especially that of the 1st applicant, does not in any way affect their beneficial interest in the estate or render the intended appeal futile.
- 35. The concerns raised about termination of employees, notices to tenants and administrative restructuring do not, in our view, materially affect the substance of the intended appeal. These are management decisions that remain subject to court oversight and may be reversed or addressed in separate legal processes if shown to be unlawful. They do not demonstrate imminent prejudice that would defeat the intended appeal. The risk of disruption or confusion does not equate to irreversible legal harm, particularly where the estate now operates under supervised administration.
- 36. In addition, and without, in any way, pre-empting the outcome of the intended appeal, the evidence before this Court suggests that administration of the estate has proceeded since the issuance of the new grant. Therefore, displacing the current administrators would create uncertainty and potentially leave the estate without lawful oversight, thereby undermining the very subject matter the applicants seek to preserve.
- 37. In the circumstances, although the intended appeal is arguable, the applicants have not established that the appeal will be rendered nugatory in the absence of stay of the impugned judgment. As the applicants were required to satisfy both limbs, which they have not, the notice of motion dated 12th March 2025 is dismissed. The costs of this application shall abide the outcome of the intended appeal.

DATED AND DELIVERED AT NAIROBI THIS 19TH DAY OF DECEMBER, 2025.

D. K. MUSINGA, (PRESIDENT)

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JUDGE OF APPEAL

F. TUIYOTT

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JUDGE OF APPEAL

P. NYAMWEYA

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.

