

REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE NO. 328 OF 1996

IN THE MATTER OF THE ESTATE OF JOHN MAKARA
MURIUKI alias MAKARA MURIUKI (DECEASED)

JANE WAMBUI MURIUKI

SAMUEL MAINA MURIUKI

.....APPLICANTS

VERSUS

ROSEMARY WAMBUI MAKARA1ST

RESPONDENT

ANN MUTHONI NDUNG'U2ND

RESPONDENT

RULING

1. The matter came off for directions in the morning, but parties did not attend. The necessary submissions have been filed. It is not necessary to dismiss for non-attendance.

2. The court decided to conclude the matter ex tempore instead of reserving the ruling for another day. In the application dated 7/8/2025, the Applicant sought the following orders:
 - a) Spent.

- b) That the Honourable Court be pleased to grant leave to the Applicants to file the Notice of Appeal.
- c) That the Honourable Court be pleased to issue stay of execution of the ruling and order of 28th July, 2025 pending hearing and determination of this application.
- d) That the Honourable Court be pleased to issue stay of execution of the ruling and order of 28th July, 2025 pending hearing and determination of the intended appeal. (Annexed hereto is a cop of the said Notice of Appeal marked SMM).
- e) Costs of this application be provided.

3. They contended that the applicants were not parties to the judgment of the Court of Appeal. The court, in its decision dated 28th July 2025, merely enforced the Court of Appeal's judgment. The applicants were, in effect, challenging a final decision of the Court of Appeal, which had already been conclusively rendered. There was therefore nothing left for the Court of Appeal to decide, the matter having been fully adjudicated.

4. The appeal No. 114 of 2017 is binding on all the parties in said matter. Consequently, the court declined to grant leave to appeal.

5. The consequence of the foregoing is that stay of execution is unnecessary. In any case, even if leave had been granted, the substance of the application had already been addressed by the court of appeal. There is nothing to stay. Consequently, the application for stay is dismissed.

6. Costs are generally discretionary. However, the discretion is not arbitrary. The Court of Appeal in the case of **Farah Awad Gullet v CMC Motors Group Limited** **[2018] KECA 158 (KLR)** had this to say:

"It is our finding that the position in law is that costs are at the discretion of the court seized up of the matter with the usual caveat being that such discretion should be exercised judiciously meaning without caprice or whim and on sound reasoning secondly that a court can only withhold costs either partially or wholly from a successful party for good cause to be shown.

7. The application was unnecessary. The applicant shall therefore pay costs of Ksh. 5,000= to the Respondent.

8. The file is closed.

DELIVERED, DATED and SIGNED at **Nyeri**, virtually on this **20th** day of **January, 2026**. Judgment delivered through Microsoft Teams Online Platform.

KIZITO MAGARE
JUDGE

In the presence of: -

No Appearance by Parties.

Court Assistant - Michael

ORIGINAL