

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
SUCCESSION CAUSE NO. E312 OF 2014

BETWEEN

PAULINA KATUMBI KIMOLO
.....PETITIONER/APPLICANT

VERSUS

ANNAH NDUNGE NZIOKI
.....OBJECTOR/RESPONDENT

RULING

1. The applicant moved this court seeking, stay of execution of the orders issued on 13th March 2025 and stay of proceedings pending determination of his appeal. The impugned ruling revoked the grant issued to the applicant and directed that new letter of administration be issued jointly to the applicant, the respondent, and Samuel Kimolo Muia, with further directions on confirmation of grant.
2. The applicant contends that he has lodged an arguable appeal before the Court of Appeal. He argues that unless stay is granted, the appeal will be rendered nugatory as the estate property may be dealt with to his detriment, and the respondents may not be able to refund any amounts in the event of a successful appeal. He relies on

Kenya Power & Lighting Company Limited v Esther Wanjiru Wokabi [2014] KEHC 3174 (KLR) to urge the court to grant stay, submitting that the application was filed expeditiously

and that it is in the interest of justice that the application be allowed and so as to avoid wasting judicial time.

3. The respondent, through a replying affidavit sworn by Annah Ndunge Nzioki, opposes the application. She depones that the applicant has previously sold part of the estate and was convicted to serve probation, which he has not appealed. She argues that the grounds of appeal raised are not arguable, no prejudice will be occasioned to the applicant since both parties have been appointed administrators of the estate of the deceased and the applicant will have an opportunity to advance its interest and the contentious issues will be addressed at confirmation. She further submits that this is an old matter that needs to be concluded.
4. The principles governing stay of execution and stay of proceedings are set out under Order 42 Rule 6 of the Civil Procedure Rules. The applicant must demonstrate; that they have an arguable appeal; he will suffer substantial loss if stay is not granted; that the application was filed without unreasonable delay; and where necessary security has been provided.
5. The Court of Appeal in ***Kenafriic Matches Ltd v Match Masters Ltd [2021] KECA*** emphasized that stay orders

are discretionary and must balance the interests of both parties. Similarly, in ***Macharia v Wachira [2024] KEHC 4223 (KLR)***, the High Court reiterated that stay is not automatic and sufficient cause must be shown. The court must balance the interests of the Appellant with those of the Respondent.

6. On arguable appeal, while the applicant raises issues that court erred when it found that the respondent was a wife before interrogating the customary rites and that it erred when it issued orders that had not been sought. This court notes that the, orders of 13th March 2025 are not final. The applicant herein remains a co-administrator and will have the opportunity to ventilate his grievances during the process leading to confirmation of the grant.
7. On substantial loss, the applicant has not demonstrated how his interests will be irreparably prejudiced. The estate remains under joint administration, between himself and the respondents, and any dealings will be subject to confirmation proceedings.
8. On timeliness, the application was filed within 11 days, which is expeditious. On security, none has been offered.
9. This court notes that the orders being sought to be stayed were indeed intended to facilitate effective administration of the estate. The appeal will not be rendered nugatory as the applicant remains a co-administrator and will continue to participate in confirmation proceedings. In

these circumstances, I decline to exercise the discretion to grant the stay as doing so would stall the matter. Importantly, the applicant will still retain the right to appeal if dissatisfied with the final outcome of the case. Granting a stay at this stage will therefore be contrary to the overriding objective of expeditious disposal of cases.

10. The upshot is that the applicant has not satisfied the threshold for grant of stay under Order 42 Rule 6. The application is dismissed costs shall be in the cause.

Dated, signed and delivered at Machakos this 14th day of January 2026.

RHODA RUTTO
JUDGE

In the presence of;

.....Petitioner

.....Objector

Selina Court Assistant