



In re Estate of Gikandi Home alias Gikandi Wahome (Deceased) (Succession Appeal E005 of 2025) [2026] KEHC 364 (KLR) (21 January 2026) (Ruling)

Neutral citation: [2026] KEHC 364 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
SUCCESSION APPEAL E005 OF 2025
LN MUTENDE, J
JANUARY 21, 2026
IN THE MATTER OF THE ESTATE OF THE LATE G
HOME ALIAS G W (DECEASED**

BETWEEN

GLADYS MUMBI GIKANDI APPLICANT

AND

KAGIRI GIKANDI 1ST RESPONDENT

MIRIAM WARINGA GIKANDI 2ND RESPONDENT

AND

ESTHER GATHONI GIKANDI INTERESTED PARTY

JOSEPH WERU GIKANDI INTERESTED PARTY

MARGARET NJOKI GIKANDI INTERESTED PARTY

SIMON MWANGI GIKANDI INTERESTED PARTY

JANE WANJIKU GIKANDI INTERESTED PARTY

MICHAEL IRUNGU GIKANDI INTERESTED PARTY

RULING

1. G M G , the Applicant, approached this court through general summons seeking orders thus;
 - a. Spent.
 - b. That pending the hearing and determination of this application interparte there be an interim conservatory order to restrain all the parties and beneficiaries to the estate of the deceased herein



from wasting, alienating, selling, leasing, mortgaging, subdividing or in any manner whatsoever interfering with the estate of the deceased herein pending the hearing and determination of the instant summons for revocation of the grant.

- c. That pending hearing and determination of this application there be an interim order preserving the estate of the late G Home alias G W, the deceased herein.
 - d. That pending hearing and determination of this summon this honourable court be pleased to issue a prohibitory order prohibiting any dealings involving the following properties;
 - i. Nyandarua/Leshau Block 3(Raichiri)/196
 - ii. Nyandarua/Leshau Block 3(Raichiri)/185
 - iii. Nyandarua/Leshau Block 3(Raichiri)/264
 - iv. Nyandarua/Leshau Block 3(Raichiri)/246
 - v. Nyandarua/Leshau Block 3(Raichiri)/247
 - vi. Salama Farmers Co. Ltd Shares
 - vii. Any other deceased's property
 - e. That pending the hearing and determination of this appeal there be a conservatory order to restrain all the parties and beneficiaries to the estate of the deceased herein from wasting, alienating, selling, leasing, mortgaging, subdividing or in any manner whatsoever interfering with the estate of the deceased herein pending the hearing and determination of the instant summons for revocation of the grant.
 - f. That pending hearing and determination of this appeal there be an interim order preserving the estate of the late G Home alias G W, the deceased herein.
 - g. That any other order this court may deem fit to grant.
 - h. That the costs do abide the outcome of the intended appeal.
 - i. Any other order this court may deem fit to grant.
2. The application is premised on grounds that the Applicant stands to be disinherited as a rightful dependent since the grant issued to the deceased estate was obtained through fraudulent means as the Applicant was not involved in the process of obtaining it. That being a biological daughter of the deceased, and, entitled to inherit she filed summons for revocation of grant dated 9th January, 2025 which was dismissed by the court, despite being merited.
 3. That beneficiaries entitled to inherit have been left out in the confirmation of grant yet they have never denounced their right to inherit from the deceased's estate. That the certificate of confirmation of grant included properties which do not form part of the deceased's estate namely Nyandarua/Leshau Block 3(Raichiri)/248 and Salama Farmers Company Limited.
 4. That the Applicant has moved timely by filing an appeal hence if prayers for preservation of the deceased's estate and stay of execution pending the hearing and determination of the appeal for prayers sought are not granted, the appeal shall be rendered nugatory.
 5. That the Respondents are actually in the process of selling the land to innocent purchasers an action that would irreparably prejudice the rightful beneficiaries of the deceased's estate, causing injustice



and disinheritance and that the intended appeal is arguable and not frivolous with high chances of succeeding.

6. The Respondents filed a replying affidavit through Miriam Waringa G where it is deponed that the instant application has been overtaken by events as the grant confirmed on 17/02/2022 has already been executed and a title Nyandarua/Leshau Block 3(Raichiri)/246 issued to her. That the Applicant approached the trial court with the same prayers sought herein thus the application is an attempt to appeal and/or review the Ruling delivered on 1st April, 2025 and no substantial loss has been established by the Applicant.
7. The application was canvassed through written submissions which I have duly considered alongside the application, affidavits in support and opposition together with annexures thereto. The application before court is general summons. The Applicant should have filed a Notice of Motion. But the court overlooks the defect in the interest of justice as it goes to the form as opposed to substance.
8. The Applicant seeks conservatory orders as well as restraining orders pending determination of the appeal. the court is urged to have the estate of the deceased preserved until the appeal is heard and determined as the final decision would be rendered useless. To this end the core principles of granting orders sought are enshrined in Order 42 Rule 6(1) (2) of the Civil Procedure Rules that provide as follows;
 - (1)No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
 - (2)No order for stay of execution shall be made under subrule (1) unless—
 - a. the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
 - b. such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.
9. It therefore behoved the Applicant to prove that unless orders sought are granted, substantial loss will result as the appeal will be rendered nugatory; the application has been brought without undue delay; the Applicant is willing to provide security for due performance of the decree; and, that the appeal is arguable.
10. On the issue of substantial loss, what can be gleaned from submissions by the Applicant though muddled as arguments for the main appeal are mixed up with those of the motion for conservatory and restraining orders; is that the Applicant and other beneficiaries' rights to inheritance were violated as they were excluded from inheriting the deceased's properties yet they did not denounce the right of inheritance and the estate of the deceased is being disposed off to their detriment hence stand to suffer irreparable harm. That the Respondents are in the process of selling the property to innocent potential purchasers and with the intention of disinheriting the Applicant and the family of the estate of Zipporah Nyaguthii G together with other beneficiaries.



11. It is however argued by the Respondents that the application has been overtaken by events as the Respondents have already inherited the estate properly and even developed it. That the grant has been executed and title transferred, hence there is nothing to stay. And the allegation to dispose the property is baseless and unfounded.
12. In *Kenya Shell Limited v Kibiru & Another* (1986) 1KLR 410 the Court of Appeal tendered itself regarding the principle of substantial loss thus;
 - “ 1....
 2. In considering an application for stay, the court doing so must address its collective mind to the question of whether to refuse it would render the appeal nugatory.
 3. In applications for stay, the court should balance two parallel propositions, first that a litigant, if successful should not be deprived of the fruits of a judgment in his favour without just cause and secondly that execution would render the proposed appeal nugatory.”
13. In *Wangalwa & Another v Agnes Naliaka Chesoto* [2012] eKLR the court stated that;

“No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process.

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. This is what substantial loss would entail, a question that was aptly discussed in the case of *Silverstein N. Chesoni* [2002] 1KLR 867, and also in the case of *Mukuma V Abuoga* quoted above. The last case, referring to the exercise of discretion by the High Court and the Court of Appeal in the granting stay of execution, under Order 42 of the CPR and Rule 5(2) (b) of the Court of Appeal Rules, respectively, emphasized the centrality of substantial loss thus:

“...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.”
14. The application herein emanates from a succession matter. The response filed does not deny the fact that the Applicant is the biological daughter and dependent of the deceased. She argues that she was not involved in the process of obtaining the grant of letters of Administration just like her siblings, a grant that the Respondents’ argue has already been confirmed. Also left out per the argument is a wife to the deceased, Esther Gathoni G. Being disinherited would be a huge substantial loss. However, the impugned Ruling was not annexed to the application for this court to tell what the findings of the trial court were.
15. It is urged by the Respondents that the application dated 14th April, 2025, was for revocation of grant which was dismissed. That the court held that issues alleged, forgery of signatures, non-involvement of beneficiaries and inclusion of property forming part of the estate had already been raised and



conclusively determined in the earlier Ruling of 24th December, 2024, hence matters settled cannot be re-introduced.

16. Further, that the Applicant is in effect inviting this court to appeal over its decision which it cannot do. No evidence of the alleged impugned Ruling has been placed before this court and it is not implied that this court delivered a Ruling in that regard.
17. On the question of res-judicata, the Principle of finality is one of the pillars upon which the judicial system is founded once a judgment becomes conclusive, the matters in issue cannot be re-opened unless fraud or mistake or lack of jurisdiction is cited to challenge it at a late stage.
18. In *John Florence Maritime Services Limited & Another v Cabinet Secretary, Transport and Infrastructure & 3 Others* [2021] KESC 39(KLR) the Supreme Court stated that;

“The principle of finality or res judicata is a matter of public policy and is one of the pillars on which a judicial system is founded. Once a Judgment becomes conclusive, the matters in issue covered thereby cannot be reopened unless fraud or mistake or lack of jurisdiction is cited to challenge it directly at a later stage. The principle is rooted to the rationale that issues decided may not be reopened and has little to do with the merit of the decision.”
19. The court at paragraph 62 quoted the case of *William Kabogo Gitau v Ferdinand Ndung’u Waititu* [2016] eKLR where Onguto J held that;

“59. In the cases of *Aggrey Chiteri vs. Republic* [2016] eKLR and *Edward Okongo Oyugi & 2 Others vs. The Attorney General* [2016] eKLR, this court held that the doctrine of res judicata applied with even force to constitutional litigation though it was important that caution is exercised lest a person whose rights were being violated a fresh was unjustly locked out from the wheels and seat of justice. So, said the court in *Edward Okongo Oyugi & 2 Others vs. The Attorney General* [supra]:

“[11] The application of the principle of res judicata has the potential of locking out a person from the doors of justice or even reaching the out-stretched arms of justice if the claim is disposed off without venturing into the merits. Consequently, the factors and circumstances ought always be nit-picked and caution exercised. The court ought to be in no doubt that the principle is applicable to the facts and circumstances of each case”
20. Whether or not the matter was litigated directly, substantially with finality will be addressed when the original proceedings of the lower court will be availed which will include the impugned Ruling.
21. On the second issue of whether the application was filed timeously. The impugned Ruling is stated to have been delivered on 1st April, 2025 and the instant application was filed on 9th April, 2025, this would mean that the application was filed promptly.
22. It is urged that unless orders sought are granted the appeal shall be rendered nugatory. The apprehension by the Applicant is that those bequeathed various properties will proceed to dispose them off hence wasting the deceased’s estate an allegation dismissed by the Respondents as mere assertion without an iota of evidence.



23. In *University of Nairobi v Riccati Business of East Africa* [2020] KECA 463 (KLR) the Court of Appeal stated that;

“We remind ourselves that on whether the appeal is arguable, the applicant need not establish a multiplicity of grounds and it is sufficient if a single bona fide arguable ground of appeal is raised. See *Damji Pragji Mandavia v Sara Lee Household & Body Care (K) Ltd*, Civil Application No. Nai 345 of 2004.

An arguable appeal is also not one which must necessarily succeed, but one which ought to be argued fully before the Court; one which is not frivolous. See *Joseph Gitahi Gachau & Another v. Pioneer Holdings (A) Ltd. & 2 others*, Civil Application No. 124 of 2008. From the material before us, we are satisfied that the applicant has established the limb on arguability.”

24. In *Stanley Kang’ethe Kinyanjui v Tony Ketter & 5 Others* [2013] KECA 378 (KLR) the Court of Appeal stated that;

“In considering whether an appeal will be rendered nugatory the court must bear in mind that each case must depend on its own facts and peculiar circumstances. *David Morton Silverstein v Atsango Chesoni*, Civil Application No. Nai 189 of 2001.”

25. This application has peculiar circumstances. The Applicant seeks preservation of the estate of the deceased. The certificate of confirmation of grant is dated 17th February, 2022, where the Applicant is excluded. The 2nd Respondent Miriam Waringa G has deponed at paragraph 6 of the replying affidavit that she already has the title Nyandarua/Leshau Block 3(Raichiri)/246 in her name. But the annexure “MWG3” the stated copy of the title is in the name of “G HOME” a title deed that was issued on 16th March, 2007 before confirmation of grant. This being the case there is a possibility of the estate having not been distributed and transmitted.

26. No doubt the Applicants have not addressed the question of costs for due performance of the decree. However, this being a family matter the same is overlooked.

27. On a balance of convenience pending in the outcome of the appeal, the Applicant herein is likely to suffer irreparable harm. Therefore, the balance of convenience would require that status quo prevails.

28. In the premises I order that;

- a. Status quo as per the time of filing of the appeal be maintained.
- b. The appeal be heard on priority basis.
- c. Costs to abide the appeal.

29. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 21ST DAY OF JANUARY, 2026.

.....

L.N. MUTENDE

JUDGE

