In re Estate of MWN - Deceased (Family Appeal E174 of 2024)
[2026] KEHC 1863 (KLR) (Family) (16 February 2026) (Ruling)

Neutral citation: [2026] KEHC 1863 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

FAMILY APPEAL E174 OF 2024

CJ KENDAGOR, J

FEBRUARY 16, 2026

IN THE MATTER OF THE ESTATE OF MWN – DECEASED

BETWEEN

CGM & PMM (BOTH SUING AS THE GUARDIANS AND NEXT FRIEND TO CBG & MOM (MINORS) AND ADMINISTRATORS OF THE ESTATE OF GMM) ..... APPELLANT

AND

SN ..... 1ST RESPONDENT

LMN ..... 2ND RESPONDENT

(Being an Appeal against the Ruling of the Chief Magistrate's Court of Kenya at Milimani delivered by Hon. G.M. Gitonga (Mr.) on 4th December, 2024)

RULING

1. This ruling is on the application dated 21st February, 2025 filed by the Applicants seeking the following orders;

    i. That this application be certified urgent and be heard ex parte in the first instance;

    ii. That pending the hearing and determination of the appeal, the court be pleased to issue stay of execution of the ruling by the honourable G.M. Gitonga, in *Succession Cause No. E105 of 2023*, delivered on 4th December, 2024;

    iii. That the firm of Rikana Law & Associates Advocates, be barred from taking conduct of the Appeal, for conflict of interest;

    iv. That costs be provided for;

v. Any other or further orders as this honourable court may deem fit to grant in the interest of just.

2. The present appeal was lodged by the Applicants against the decision of the Magistrates Court, delivered on 4th December, 2024 which confirmed the Grant of Letters of Administration intestate to the Respondents, against which the Applicants had lodged a protest.

3. The memorandum of appeal raises the following grounds;

i. That the learned magistrate erred in law and in fact in his orders/directions delivered on 4th day of December, 2024 by framing a single issue for determination whose resolution would not conclusively address that contention at hand thereby occasioning miscarriage of justice;

ii. That the learned magistrate erred in both law and fact by considering matters extraneous to the subject contention, to wit; "Life Insurance Policies taken out by G M in favour of his wife M N," in coming up with the impugned ruling dated 4th December, 2024;

iii. That the learned magistrate erred in both law and fact by failing to consider the overwhelming evidence tendered by the protestors, which clearly illustrate the connection between the Estate of G M and M N and insteat arrived as a different conclusion, against the said tide;

iv. That the learned magistrate erred in both law and fact in commenting that since the protestors are administrators of the Estate of G M, then it would only be fair that the petitioners be allowed to administer the Estate of M N. Suggesting that the protestors intended to sideline and alienate petitioners in the administration of the Estate of M N, which position is incorrect as the protestors sought for joint administration;

v. That the learned magistrate erred in both law and fact in failing to analyse any prejudice that the petitioners would suffer if the protestors prayer for joint administration was allowed, thereby occasioning miscarriage of justice as the same was arbitrary;

vi. That the learned magistrate erred in both law and fact in directing that the estate of G M (Deceased) and M N (Deceased) be administered separately, yet the ultimate and only beneficiaries are minors. The same had the potential effect of causing family rift and reduced accountability, as any rate against the best interest of the subject minors;

vii. That the learned magistrate erred in both law and fact by venturing into a frolic of his own, through delving into how the estate of G M (Deceased), should be administered. Which was a matter not in issue and never raised by any party, since succession proceedings to the said estate were concluded and the protestors duly confirmed as the administrators of the said estate;

viii. That the learned magistrate erred in both law and fact in finding that the listed policies did nor form part of the estate of M N (Deceased), whereas there was evidence pointing to the fact that the said policies matured upon the death of G M, and were cashed out by M, his wife, before her unfortunate and untimely demise;

ix. That the learned magistrate erred in both fact and in law in holding that the Estates of G M and M N, were not intertwined yet the two were married and remained married at the time of their deaths. Which finding turns on its heard, the understanding and principles of what constitutes matrimonial property as etched in the *Matrimonial Properties Act*, thereby exposing the appellants to great prejudice;

x. That the learned magistrate erred in both law and fact in failing to consider that the properties constituting the Estate of M N (Deceased), was acquired in the pendency of her marriage to G M (Deceased). For whose estate, the appellants are administrators, and therefore have a stake in the administration of the Estate of M N (Deceased), and their participation cannot be excluded or wished away;

xi. That the learned magistrate erred in both law and fact by failing to appreciate that resolution of family disputes, especially where minors are involved, needs to promote cohesion instead of acrimony, given that all the parties involved are merely trustees for the benefit of the subject minors, who are the only and ultimate beneficiaries of the two estates.

4. The appeal and the application are opposed. The Respondents filed a replying affidavit dated 4th June, 2025.

5. The Applicants argue that substantial loss will be occasioned if the orders sought in the application are not granted because the applicants will not be able to seek any relief through the appeal once the Respondents proceed to distribute the estate, which they argue will be to the detriment of the minors.

6. The Applicants contend that they have demonstrated sufficient cause and filed the application without delay; therefore, they request the Court to grant the orders sought.

7. In the case involving the firm of Rikana Law & Associates Advocates, which is representing the Respondents, the Applicants argue that Counsel Rikana has a familial connection to the parties and that this relationship creates a conflict of interest. Specifically, Counsel Rikana is the son of the 1st Respondent and the brother of the 2nd Respondent. This makes him the son-in-law of the 1st Appellant and the brother-in-law of the 2nd Applicant.

8. The Respondents, on the other hand, argue that the estate has already been administered and that the application is overtaken by events. They further argue that Applicants have failed to demonstrate substantial loss, failed to file the application within a reasonable time and have not offered security for due performance.

9. On the issue of conflict of interest, the Respondents argue that Counsel is duly instructed and termed the allegations of conflict as baseless.

10. The issues for determination are ;

a. Whether the Applicants have made a case for issuance of stay orders;

b. Whether the firm of Rikana Law & Associates Advocates should be barred from conducting the appeal due to a conflict of interest.

11. Order 42 Rule 6 (2) of the *Civil Procedure Rules* which provides that;

> " No order for stay of execution shall be made under sub rule (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.

12. Stay of execution is a discretionary power which must be exercised on defined principles and facts.

13. The application was not brought with undue delay. There was a recess period between 21st December and 13th January. The Applicants also highlighted the challenges they faced in obtaining the typed ruling and proceedings, which necessitated the Court's intervention.

14. The effect of the stay order would be to stop the implementation of the Certificate of Confirmation of Grant that was issued pursuant to the Ruling of 4th December, 2024. Therefore, imposing security as a condition of stay, given the circumstances of the case, is not practicable. The main determinant would be the substantial loss that would be occasioned if the sought orders are not granted.

15. According to the annexures in the Replying affidavit, the two immovable assets in the Certificate of Confirmation of Grant have already been registered in the names of the Administrators/Respondents, held in trust for the benefit of the minors CBKM and NOMM, who are the children of the deceased. The other assets in monetary form are also to be held by the Administrators in trust for the benefit of the said minors.

16. The Administrators do not have any vesting rights in their individual capacity. Their role as trustees means they cannot sell the property without Court permission. When minor children are involved, the law requires that Personal Representatives be more than one person to safeguard the children's best interests.

17. The Applicants have failed to establish any substantial loss. There are legal safeguards in place to govern the execution of the certificate of confirmation of grant. Additionally, there is no evidence that the children would face any adverse effects or be disadvantaged as a result of the present situation.

18. I find that there is no prejudice to be suffered by the Applicants if no stay order is made.

19. In considering the issue of legal representation, the right to legal representation by counsel of one's choice is a constitutional right.

20. The *Law Society of Kenya Code of Standards of Professional Practice and Ethical Conduct*, 2016 defines conflict of interest in Rule 6 paragraph 96 as follows: -

> "A conflicting interest is an interest which gives rise to substantial risk that the Advocate's representation of the client will be materially and adversely affected by the Advocate's own interests or by the Advocate's duties to another current client, former client or a third person."

21. I noted that a similar issue was raised in a case involving the same parties at the Nakuru Law Courts *(MCSUCC/E700/2022)*. I fully align with the ruling in that instance, which articulated that familial ties do not inherently bar an attorney from representing a client. These personal relationships pose a potential conflict only when they become significant obstacles to the administration of impartial justice or when they involve confidential information that could directly influence the outcome of the case.

22. In this case, the Applicants only made allegations but did not provide any precision about how the conflict arises or is anticipated and how it would prejudice the administration of justice.

23. For the foregoing reasons, I find no merit in the application dated 21st February, 2025. It is dismissed, and the costs shall abide the outcome of the appeal.

24. Given that there are minors involved, it is in their best interest that the appeal is heard and determined expeditiously. The typed proceedings are now ready. The Appellant is granted leave to file a comprehensive record of appeal that includes the ruling and the typed proceedings within 15 days. Further directions shall be issued upon compliance.

25. It is so ordered.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 16TH DAY OF FEBRUARY, 2026.

.....

C. KENDAGOR

JUDGE

In the presence of:

Court Administrator: Beryl

Mr. Rai, Advocate for Appellant/Applicant

Mr. Rikana, Advocate holding brief for Miss Kabiru, Advocate for Respondent