

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

SUCCESSION CAUSE NO.29 OF 2004

**IN THE MATTER OF THE ESTATE OF ATHANAS NZAYWA
MUTESHI.....DECEASED**

CATHERINE MURANDITSI MUTESHI AGEVI.....APPLICANT

VERSUS

ANGELINE MIKALITSTI MUTESHI.....1ST RESPONDENT

**SEVENCIA INGASO MUCHITI.....2ND
RESPONDENT**

**MARGARET BUSIHIRI MUTESHI OKORE.....3RD
RESPONDENT**

**ESTATE OF FRANCISCA NALISI MUTESHI.....4TH
RESPONDENT**

**ESTATE OF BENARD NAVAKWI MUTESHI.....5TH
RESPONDENT**

RULING

1. Catherine Muranditsi Muteshi, the applicant herein through a Notice of Motion dated 16/10/25 is moving this court for the following reliefs namely;

(i) Spent

(ii) That this court be pleased to stay the proceedings in this matter pending the hearing and determination of the appeal filed in Court of Appeal.

(iii) That this Hon court be pleased to grant orders of stay of execution of the judgment and any other subsequent orders pursuant to the judgment delivered on 15/10/25 pending the hearing and determination of the appeal.

2. The applicant has filed the following grounds namely;

(a) This court delivered its judgment on 15/10/25.

(b) That the applicant is aggrieved and has filed Notice of Appeal and applied for certified copies of proceedings.

(c) That unless stay is granted the respondents are likely to proceed with the execution to the great loss and detriment to the applicant.

(d) That the intended appeal is arguable and will be rendered nugatory if stay is not granted.

(e) That unless stay is granted the applicant is apprehensive that she would suffer irreparable loss and damage if execution is carried out.

3. In her supporting affidavit the applicant has reiterated the above grounds and exhibited a copy of Notice of Appeal filed together with a letter requesting proceedings and judgment.

4. She avers that this application has been made without any delay and that it is fair and in the interest of justice to grant it.

5. The respondents have opposed this application stating that they were satisfied with the decision of this court. Though grounds of opposition filed by Margaret Busihiri Muteshi Okore, the 3rd respondent avers that the distribution of the

estate was equal, fair and ensured that every beneficiary had access to the main road. That the family has been waiting for 20 years to have the dispute resolved and should be allowed to move on after such a long wait.

6. Angelina Mukalitsi Muteshi in her replying affidavit sworn on 7/11/25 has also opposed the application. She submits that the beneficiaries agreed on equal distribution of the estate with each beneficiary having access to the main road and the river. She further contends that to ensure fairness and equity each beneficiary got an equal fair share of the estate.
7. This court has considered this application and the response made. This is an application for stay of execution pending the determination of an intended appeal. The applicant has invoked section 44 of Law of Succession Act and Rule 44 and 55 of Probate and Administration Rules which in my considered view are not applicable to the prayers sought. The provisions of Order 2 Rule 15 (1) of the Civil Procedure Rules are not applicable either. The applicable Rule is Order 42 Rule 6 of the Civil Procedure Rules as envisaged under Rule 63 of Probate and Administration Rules. Order 42 Rule 6 of the Civil Procedure Rules provides that an appeal does not automatically operate as a stay of execution unless an applicant shows good cause. Subsection 2 of the same Rule provides that a stay of execution cannot be granted unless 3 conditions are satisfied;

- (i) That a substantial loss would result unless stay is granted.**
- (ii) Security for due performance of decree is offered.**
- (iii) That the application is brought timely.**

8. I have looked at the grounds raised by the applicant and I am satisfied that good cause has been shown because there is a Notice of Intended Appeal filed.

9. I am not however persuaded that the applicant has satisfied the 2nd limb of the cited conditions that is demonstrate that a substantial loss would be occasioned or that the intended appeal would be rendered nugatory if each beneficiary is given his or her share to utilize in the meantime as the applicant pursues her right of appeal. In my considered view it is only fair and in the interest of justice to allow each beneficiary get and enjoy/or utilize fair share as decreed by this court as the applicant pursues her intended appeal. This court is not persuaded that in that event any of the parties would be prejudiced or that the appeal would be rendered nugatory.

In the premises this court finds that the application dated 16/10/2025 lacks in merit and is disallowed with costs to the respondents.

DELIVERED, DATED and SIGNED at KITALE this12th day ofFEBRUARY....., 2026.

HON JUSTICE R.K. LIMO

KITALE HIGH COURT

Ruling delivered in open court

In the presence of;

Ms Owino for the Applicant

Mugo for Respondent

Margaret Okore present

Sevenzia Ingaso

Angeline Muteshi

Duke/Chemosop -Court assistants