

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KITALE
CIVIL APPEAL NO.E064 OF 2024

MARY CHEROTICH BERNARD.....APPELLANT

VERSUS

MARY ANNE BIWOTT.....1ST
RESPONDENT

MICHAEL KIPROTICH BIWOTT.....2ND
RESPONDENT

RULING

1. Mary Cherotich Bernard, the appellant/applicant herein has moved this court through a Notice of Motion dated 14/10/2025 for the following orders namely;

- (i) Spent**
- (ii) Spent**
- (iii) That pending the hearing and determination of the appeal herein there be a stay of further proceedings or implementation of any such order made by the Chief Magistrate's Court in Kitale CMC Succ. Cause No.E155/2023**
- (iv) That this court do make appropriate orders to stop the respondents from interfering with or invading Title Number Trans Nzoia/Sitatunga/9 measuring 5 acres until the appeal is determined.**
- (v) That this court do give appropriate orders as to the admission of the appeal or any further proceedings in respect to the appeal herein.**
- (vi) That costs be provided.**

2. The grounds are;

- (a) That the applicant was dissatisfied with the Ruling dated 16/9/2024 and preferred an appeal herein.*
- (b) That the applicant subsequently filed an application for stay of proceedings.*
- (c) That the application was disallowed and injuncted the appellant from utilizing the matrimonial property she purchased jointly with the deceased.*
- (d) That the respondents intend to disinherit the applicant.*
- (e) That the deceased left a Will.*
- (f) That it is in the interest of justice to grant stay of proceedings.*

3. The applicant has supported the application with her affidavit sworn on 14/10/2025.
4. She avers that she is the 2nd widow to the deceased while the 1st respondent is the 1st widow.
5. That the 1st and 2nd respondents colluded in the lower court to file succession proceedings in her absence and forged her signature.
6. That she filed objection which was allowed but that the court introduced Norah Kinara Kerubo as a beneficiary from nowhere.
7. That in view of that she filed the appeal herein and subsequently the 1st respondent filed an application seeking that she be declared an intermeddler.

8. That the lower court recognized that there was a Will and proceeded to revoke the initial grant.
9. That she sought stay of proceedings in light of the preferred appeal but her application was declined vide a ruling delivered on 21/8/2025.
10. That the dismissal of her application in effect amounts to her eviction from a parcel she has occupied since time immemorial after purchasing it with the deceased.
11. That the Will recognizes her entitlement and for that reason she should be granted stay until the appeal is determined and seeks reliance on the following authorities cited by counsel.
 - (i) **James Wangalwa -vs- Agnes Naliaka Chesoto (2012)eKLR**
 - (ii) **Turbo Highway Eldoret Ltd -vs- Munio (2022) KEHC 1097 (KLR).**
12. The respondents have opposed this application through a replying affidavit of the 1st respondent Mary Anne Jeruto Biwott sworn on 12/1/2026 and written submissions through learned counsel K&A Advocates LLP dated 22/1/2026.
13. She avers that she is the 1st wife to the deceased who is registered owner of Trans Nzoia/Sitatunga/9.
14. She avers that the applicant is her co-wife and faults her for allocating herself the entire parcel Trans Nzoia/Sitatunga/9 to the exclusion of other beneficiaries.
15. That the applicant evicted Norah Kinara Kerubo who is the 3rd wife to the deceased.

16. That the applicant has been utilizing the property in dispute since the demise of the deceased without giving an account of the farming proceeds thereby jeopardizing the interests of other beneficiaries especially the 3rd house.
17. That the applicant has not provided evidence that she purchased or contributed to the purchase of Trans Nzoia/Sitatunga/9.
18. That the application has been brought to delay the determination of the cause in the lower court.
19. That the application is aimed in enriching the applicant because of the continued utility of Trans Nzoia/Sitatunga/9.
20. This court has set out both the application, the grounds raised and the response filed. The respondents have made extensive submissions on stay of execution but the applicant seeks stay of proceedings.
21. The application before me is for stay of proceedings in the lower court CM's Court Succ. Cause No.E155/2023. A stay of proceedings is a discretionary relief that has the effect of stalling a legal process and inhibit access to justice therefore it is usually granted in exceptional circumstances where an applicant demonstrates that unless the proceedings are stayed, substantial or irreparable loss will be occasioned or that a miscarriage of justice is likely to occur. An applicant should therefore demonstrate compelling reasons to be granted a stay of proceedings.

In the case of **Kenya Wildlife Service -vs- James Mutembei (2019) eKLR** the court made the following observations;

“Stay of proceedings is a grave judicial action which interferes with the right of a litigant to conduct his litigation. It impinges on the right of access to justice, the right to be heard without delay and overall the right to a fair trial. Therefore the test for stay of proceedings is high and stringent. This is a power which it has been emphasized ought to be exercised sparingly and only in exceptional cases..... the application for stay..... must show not merely that the plaintiff might or probably would not succeed but that he could not possibly succeed based on the pleadings and facts of the case.”

22. This court has perused through the ruling of 21/8/2025 from the lower court and the order issued thereof dated 6/10/2025. The order reads;

“The objector is restrained from continuing to utilize the property Trans Nzoia/Sitatunga/9 to the exclusion of the rest of the beneficiaries.” (Emphasis added).

The order continues to direct the applicant herein to deposit the proceeds of farming from the disputed property and

render an account of proceeds since 2018. The order does not and cannot be interpreted to mean that the applicant is to be evicted from the estate. The trial court has not yet determined the question of dependancy and/or distribution of the estate. Those issues are pending for determination.

23. The applicant contends that there is a WILL but the same has not been exhibited here so it is hard for this court to know its contents. In any event if there is a WILL the trial court is well seized to determine its validity.

24. The applicant has in my considered view failed to demonstrate that there is a compelling reason(s) to stay proceedings in the lower court pending the determination of the appeal herein. The grounds raised have not reached the required threshold to persuade this court exercise its discretion in her favour. Further she has not demonstrated that her appeal is likely to be rendered nugatory or that there is a possibility of miscarriage of justice if stay of proceedings is not granted.

In the end this court finds no merit in the application dated 14/10/2025. The same is disallowed. Costs shall be in the appeal.

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

HON JUSTICE R.K. LIMO
KITALE HIGH COURT

Ruling delivered in open court

In the presence of

No appearance for Wanyonyi for the applicant

Ngeno holding brief for Koech for the respondent

Duke/Joseph/Chemosop - Court assistants