



REPUBLIC OF KENYA



**KENYA LAW**  
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**Athman v Ahmed (Family Appeal E052 of 2025)  
[2026] KEHC 1092 (KLR) (27 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 1092 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
FAMILY APPEAL E052 OF 2025**

**G MUTAI, J**

**JANUARY 27, 2026**

**BETWEEN**

**NASRA SHEIKH ATHMAN ..... APPELLANT**

**AND**

**LATFA ZEINALBDIN AHMED ..... RESPONDENT**

**RULING**

1. The application for stay is dated 15<sup>th</sup> October 2025. Vide the said application, appellants seek to stay the ruling of the Hon Abdiaziz M Mohamed delivered on 11th September 2025. In the said ruling The learned Kadhi found as follows: -

“Therefore, after hearing of the pleading and perusal of the court ruling and judgment, I make the orders and direct the following:

- i. That the applicant shall comply with the court order dated 26<sup>th</sup> June 2025 within 40 days buy the applicant, Latifa, share in the deceased estate (failing), which the estate be sold as per the valuation (by) Acre Point Realtors Ltd, and shares be distributed to the heirs as per the court judgment.
- ii. A mention date is set for compliance on 17<sup>th</sup> November 2025;
- iii. It is so ordered.”
  1. In the memorandum of appeal, the appellant raised 6 grounds of appeal, which I need not consider at this point. Suffice to say that the grounds of appeal appear to me to be arguable.



3. The application is opposed. I Z A A filed a replying affidavit sworn on 11<sup>th</sup> November 2025 in which she contended that the orders of the Hon Kadhi were fair. She urged that the application for stay of execution be dismissed.
4. L Z A also opposed the application and filed a replying affidavit, which she swore on 29<sup>th</sup> October 2025, in which she too urged that I dismiss the application with costs as it is an afterthought and unmeritorious.
5. Is the applicant merited? Conditions for the grant of stay pending appeal are stated under Order 42 Rule 6(2) as being: -

“(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.”

6. The applicants had the duty to show that: -
  - a. That they will suffer substantial loss unless a stay is granted;
  - b. That the application was filed without undue delay; and
  - c. Give security for the due performance of the orders that may ultimately be binding.
7. The purpose of the orders of stay of execution is to preserve the subject matter of the appeal so that the appeal is not rendered an academic exercise. In the case of *RWW v EKW* [2019] eKLR, it was held that:-

“The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded, and the appeal, if successful, is not rendered nugatory. However, in doing so, the Court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The Court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs.”

8. In the case of *Butt v Rent Restriction Tribunal* [1979] KECA 22 (KLR), Madan, JA, expressed himself as follows: -

“It is in the discretion of the court to grant or refuse a stay but what has to be judged in every case is whether there are or not particular circumstances in the case to make an order staying execution. It has been said that the court as a general rule ought to exercise its best discretion in a way so as not to prevent the appeal, if successful from being nugatory, per Brett, LJ in *Wilson v Church (No 2)* 12 Ch D (1879) 454 at p 459”

9. The court below ordered that the suit property be sold and gave timelines within which that should be done. Once the ruling is executed, it may not be possible for the court to undo that action. In my view, prudence calls for caution and thus a stay of execution until the appeal is heard. I say so as the appeal was filed without undue delay. Since the property is the subject of appeal, and order preserving it until the appeal is heard and determined satisfies the requirements regarding security.



10. The upshot of the foregoing is that I find merit in the application. I allow it. In the interest of justice, the appeal will be fast-tracked.
11. As this is a matter between family members, I make no orders as to costs.
12. Orders accordingly.

**DATED AND SIGNED IN MOMBASA, THIS 27<sup>TH</sup> DAY OF JANUARY 2026. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.**

**GREGORY MUTAI**

**JUDGE**

In the presence of: -

Mr Lijoodi, for the Appellants;

Ismat Zein (pro se litigant);

Latifa Zein (pro se litigant); and

Ms Bancy - Court Assistant.

