



REPUBLIC OF KENYA



KENYA LAW

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**Huka v Huka (Family Miscellaneous Application E001 of 2020)
[2026] KEHC 4127 (KLR) (Family) (19 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 4127 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ISIOLO
FAMILY
FAMILY MISCELLANEOUS APPLICATION E001 OF 2020
SC CHIRCHIR, J
MARCH 19, 2026**

BETWEEN

ABDI ROBA HUKA APPLICANT

AND

NURA ROBA HUKA RESPONDENT

RULING

1. Through the Notice of Motion dated 27/01/2026 the Applicant seeks orders as follows:
 - a. (spent).
 - b. The Honourable Court be pleased to order stay of execution of the execution order and any subsequent Decree of the Honourable Principal Kadhi Hon. Dogo Sheikh Dabaso dated on 25th September, 2025 pending hearing and determination of this Application.
 - c. The Honourable Court be pleased to order stay of further proceedings of the K Merti Kadhi's Court matter in Succession Cause No. 4 of 2018 pending the hearing and determination of the Application before this court.
 - d. The Honourable Court be pleased to order the transfer of Succession Cause No. 4 of 2018 to Isiolo Kadhi's Court for the hearing and determination of the pending Application therein.
 - e. Costs of this Application be provided for.

Applicant's Case

2. The Applicant states that he is a Defendant in Merti Kadhi's Court Succession Cause No.4 of 2018. That the order of execution was issued against him on 25/09/2025 and his herd of cattle was attached in execution on 11/01/2026; that 67 herds of cattle were driven off by the Respondent herein while



in the company of the police. He states that the cattle driven away included some others belonging to third parties, whose owners had placed them under his care.

3. The Applicant further states that he sought intervention from the trial court but his Application, which was taken to Court under Certificate of Urgency, has never been attended to by the Court. He states that the Respondent has now started disposing the cattle that belong to third parties. He is apprehensive that he is likely to be faced with claims from the said third parties. Consequently he now prays for the matter be transferred to Isiolo Kadhi's Court for determination.
4. In his submissions the Applicant submits that in terms of Section 18 of the *Civil Procedure Act* this Court has power to transfer cases between two Subordinates Courts. It is also submitted that the inaction by Hon. Kadhi at Merti constituted an infringement of Articles 48 and 50 of *the Constitution* on the right to access to justice and fair trial, respectively.

Respondent's case

5. The Respondent has objected to the Application on the basis of 3 grounds, namely:-
 - a) The application as filed is an abuse of the due process, has no merit and it is fictitious.
 - b) Execution having taken place the application has been over taken by events.
 - c) This matter having been heard by the Kadhi and the High Court on appeal the same has become functus officio.
6. In his Submissions, the Respondent state that the application is an abuse of the Court process, as the Application is not anchored on any suit or Appeal.
7. It is further submitted that the matter was finalized in 2020 and execution took place in September 2025 and consequently the Application has been overtaken by events, and there is nothing to be stayed. It is further pointed out the alleged owners of the cattle never filed any objections against the attachment.
8. It is finally submitted that this Court has become functus officio as it dealt with the same matter on Appeal.

Determination

9. The Applicant herein seeks for stay of execution of the judgment of Hon. Kadhi in Merti Kadhi's court succession cause No. 4 of 2018, stay of proceedings and transfer of suit to Isiolo Kadhi's court.
10. The Respondent has argued that the Application has no legs; it is overtaken by events and this Court is functus officio.
11. I will first address the issue of functus officio, because it determines whether the Court should proceed to address the merits of the Application or not.
12. The Respondent has merely stated that the suit had been heard by the High Court of Appeal. However, the assertion is lacking in particulars. The Respondent has not provided the Appeal Number and / or the particular High Court which handled the Appeal. Thus there is no sufficient material upon which this Court can make a finding on this issue. This ground of objection is dismissed.
13. The Respondent has submitted that the Application has no foundation; that it has no substantive pleading upon which it is founded. However, I disagree with the respondent's submissions. What is before court is a miscellaneous Application and whereas prayer (b) and (c) of the Application



are seeking interim reliefs pending the determination of the present Application ,prayer (d) seeks for transfer of the case pending “ hearing and determination of the Application therein . The main Application is the one pending before the Kadhi’s court in Merti ,and the Applicant is definitely seeking stay pending the transfer sought, and determination of the Merti court’s Application .Paragraph 18 of the supporting Affidavit affirms this position.

14. The other technical issue that the respondent has highlighted is that the execution has taken place and hence there is nothing to stay. I observe however, the respondent has not controverted the Applicant’s assertion that the herd was intercepted and are currently being kept at Merti Police Station.
15. Nevertheless, should this Court then issue stay?
16. The right to challenge attachment and process of objection to attachment of 3rd parties’ goods in execution of court decrees or orders is provided under Order 22 Rule 51-54 of the Civil Procedure Rules. The objection is brought or taken to Court by the 3rd party owner of the affected goods or items. The purported objection by the Applicant herein, as the judgment debtor, has no basis in law. Thus even if this Court was to grant stay, the reason given to justify stay is not tenable in law. The application in this regard is ill- advised.
17. On transfer, the reasons are equally misplaced. An inaction by a Subordinate Court cannot be a reason for transfer. If the Applicant is dissatisfied in the manner in which his case is being conducted, the remedy lies in an Application for recusal before the court handling the matter. If his prayer is accepted then he will have a chance to be heard by a different judicial officer. Transfer is not a remedy for dissatisfaction with the conduct of the case. Again, this approach is not founded in law.
18. The Application is unmerited. It is hereby dismissed.

DATED, SIGNED AND DELIVERED AT ISIOLO, THIS 19TH DAY OF MARCH 2026

S. CHIRCHIR

JUDGE

In the presence of:-

Roba/Kalelo-Court Assistant

