

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ISIOLO
FAMILY APPEAL NO. E005 OF 2025
IN THE MATTER OF THE ESTATE OF NOORBAI W/O
ABDULREHMAN KASSAM alias NOORBAI
ABDULREHMAN KASSAM (DECEASED)

**MANSOOR ABDULREHMAN
KASSAM.....**
APPELLANT/APPLICANT

VERSUS

**ANWAR
AHMED RESP
ONDENT**

RULING

1. What is coming up for determination is the Applicant's Notice of Motion dated 21st October 2025. The Applicant seeks to stay the execution of the Ruling and Orders of the Principal Kadhi of Isiolo Kadhi's Court in Succession Cause No. E013 of 2024, delivered on 30th September 2025 and a stay of all further proceedings in the said cause pending the hearing and determination of the appeal herein.
2. The application is supported by the Applicant's Supporting Affidavit and a further Affidavit.

The Applicant's Case

3. The Applicant contends that he was lawfully appointed as the executor of the Deceased's estate vide a will, and his appointment was confirmed in Kadhi's **court in Succession Cause No. E013 of 2024** as the executor and Trustee of the deceased's

estate. This was through the ruling dated 19th June, 2025.

4. He further states that , however in a ruling delivered on 30th September, 2025, the Hon. Kadhi delivered another ruling , the effect of which was to remove him as the Executor. He argues that this removal was done without any formal application being filed, or due process being followed.
5. The Applicant argues that he was denied the right to a fair hearing contrary to Article 50 of the Constitution. He further asserts that the trial court erred in acting ultra vires by assuming jurisdiction to determine the proprietorship of Title No. L.R. 7918/43. He is apprehensive that the Respondent may dispose of the estate property unlawfully.
6. The Applicant argues that he stands to suffer substantial and irreparable loss if the status quo is not preserved. He further posits that his appeal is arguable and not frivolous.

The Respondent's Case

7. The Respondent opposes the application. In his Replying Affidavit dated 31st October 2025, he argues that the first grant was revoked by the High Court in Nairobi by consent of all parties on 26th November 2024, and the matter was referred to the Kadhi's Court for distribution of the property under sharia law; that thus the Applicant's appointment as the Executor of the estate has since been extinguished. He further refers to a Memorandum of Understanding (MOU) dated 14th July, 2024, wherein the family agreed that the estate be administered according to shariah law.

8. The Respondent argues the Applicant cannot suffer substantial loss since he has already caused the property to be unlawfully registered in his name. He maintains that the Applicant is merely out to delay the distribution.

Determination

9. The only issues for determination in this Application are whether the Applicant has met the threshold for the grant of a stay of execution and whether the proceedings in the lower court should be stayed pending appeal.
10. The principles for granting a stay of execution are set out under Order 42 Rule 6(2) of the Civil Procedure Rules. The mandatory conditions to be satisfied are the stay shall not be granted unless;-
 - a)The court is satisfied that substantial loss may result to the applicant unless the order is made;
 - b)The application has been made without unreasonable delay; and
 - c).Such security as the court orders for the due performance of such decree or order has been given by the applicant.
11. On the issue of substantial loss, the Court is guided by the decision in **RWW v EKW (2019) KEHC 6523 (KLR)**, where it was observed that the purpose of a stay is to preserve the subject matter so that the rights of the appellant are safeguarded and the appeal is not rendered nugatory. Substantial loss is the cornerstone of the court's jurisdiction in such matters.
12. In this case, the subject matter involves immovable property and the administration of a deceased person's estate. The Applicant has expressed a well-founded apprehension that the Respondent may interfere with the property

unlawfully. In terms of the decision in **Stanley Kangethe Kinyanjui v Tony Ketter & 5 Others (2013) KECA 378 (KLR)**, a stay is necessary where the substratum of the intended appeal might end, rendering the appeal a mere academic exercise. If the property is sold or the estate administered fully before the appeal is heard, the Applicant's right to challenge his removal as executor would be futile. Therefore, I find that proceeding to final distribution before the legality of the Applicant's removal is determined could render the appeal nugatory.

13. Regarding the arguability of the appeal, the Court in **Stanley Kangethe Kinyanjui** (supra) held that an applicant need only raise a single bona fide arguable ground. I find the Applicant's contention that he was removed as a confirmed executor without a formal application or a hearing raises is an arguable issue. While the Respondent has cited the MOU, as a basis of the Applicant's removal, the court has observed that the Kadhi's court confirmed the Applicant as executor on 19th June 2025, the MOU was signed in July 2024. This discrepancy alone warrants further scrutiny on appeal.
14. As to the condition of unreasonable delay, the impugned ruling was delivered on 30th September 2025, and the application for stay was filed on 21st October 2025. This Court finds that the Applicant acted with requisite promptness.
15. On the requirement for security, I associate myself with the sentiments in **RWW v EKW** (supra) where the judge stated that in family or succession causes, the court may exercise its discretion to grant a stay without the need for security, particularly

where the subject matter is immovable property whose value is unlikely to diminish. Given that this is a succession matter involving the management of an estate for the benefit of all heirs, I find it appropriate to dispense with the requirement for security.

16. I am satisfied that the Applicant has demonstrated that he will suffer substantial loss if the Kadhi's orders are executed and that his appeal is arguable. The need to preserve the status quo outweighs the Respondent's interest in immediate execution. For the same reasons the need to stay further proceedings have been justified.
17. Consequently , the Application dated 21st October, 2025 is hereby allowed on the following terms:

- a) There shall be a stay of execution of the Isiolo Kadhi's Court ruling and orders delivered on 30th September, 2025 in KCSUCC NO. E013 OF 2024 pending the hearing and determination of this appeal.

- b). There shall be a stay of further proceedings in Isiolo Kadhi's Court Succession Cause No. E013 of 2024 until the determination of the appeal herein.

- c). Costs in the cause.

Dated, signed and delivered at Isiolo this 19th day of March 2026.

S.Chirchir
Judge.

ORIGINAL