



**In re Estate of Muchinyi (Deceased) (Succession Cause 771 of 2011)  
[2026] KEHC 4558 (KLR) (Family) (9 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 4558 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY**

**SUCCESSION CAUSE 771 OF 2011**

**HK CHEMITEI, J**

**APRIL 9, 2026**

**IN THE MATTER THE ESTATE OF SYLVESTER NJOYI MUCHINYI (DECEASED)**

**BETWEEN**

**BEATRICE MUKHWANA LUTTA ..... APPLICANT**

**AND**

**JULIANA NAFULA MUCHINYI ..... 1<sup>ST</sup> RESPONDENT**

**STEPHEN MURONO MUCHINYI ..... 2<sup>ND</sup> RESPONDENT**

**ALFRED MBATI MUCHINYI ..... 3<sup>RD</sup> RESPONDENT**

**PETER MUCHINYI SHIKUKU (BEING THE LEGAL REPRESENTATIVE  
OF THE ESTATE OF THE LATE SYLVESTER MUCHINYI -  
DECEASED) ..... 4<sup>TH</sup> RESPONDENT**

**GILPHINE KALEJI MUCHINYI ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

1. This ruling relates to the application dated 29<sup>th</sup> May, 2025 filed by the Applicant, Beatrice Mukhwana Lutta, seeking for ORDERS THAT:

1. Spent.
2. Pending the hearing and determination of this application inter partes, there be an order of stay of the instant proceedings together with the execution of th ruling and the subsequent order rendered on the January 25, 2024.
3. Pending the hearing and determination of the appeal lodged at the court of appeal, the same being Civil Appeal No. E375 of 2024, there be an order of stay of the proceedings herein,



together with the execution of the ruling and the subsequent order rendered on the January 25, 2024.

4. The costs of the application be provided for.
2. The application is based on the grounds thereof and supported by affidavit sworn by Beatrice Mukhwana Lutta on 29<sup>th</sup> May, 2025.
3. She avers inter alia that this succession cause relates to the estate of her late husband Sylvester Njoyi Muchinyi (deceased), who died testate. She is aggrieved by the ruling delivered on 25<sup>th</sup> January, 2024, in which this court allowed an application by the 1<sup>st</sup> to 4<sup>th</sup> for reasonable provision.
4. Consequently, she lodged an appeal before the Court of Appeal being Civil Appeal No. E375 of 2024, which is currently pending. Notwithstanding the subsisting appeal, the matter has been listed for confirmation hearing on 4<sup>th</sup> November, 2025 and steps towards execution of the impugned orders have either commenced or are imminent. The Applicant contends that unless a stay of proceedings and execution is granted, the substratum of the appeal will be irreparably compromised, rendering the appeal nugatory.
5. She asserts that the appeal is arguable, raising serious issues regarding the alleged misapplication of the law on reasonable provision under the Law of Succession Act. She further avers that she stands to suffer irreparable harm, including possible eviction, if the proceedings are allowed to continue before the appeal is determined.
6. Accordingly, the Applicant urges the court to exercise its discretionary powers to grant an order of stay of proceedings and execution pending the hearing and determination of the appeal, so as to preserve the subject matter of the dispute and safeguard the interests of justice.
7. The application is opposed vide grounds of opposition filed by Gilphine Kaleji Shikuku dated 16<sup>th</sup> September, 2025, grounds of opposition filed by Peter Shikuku Muchinyi dated 30<sup>th</sup> January, 2026 and replying affidavit sworn by Gilphine Kaleji Shikuku on 30<sup>th</sup> October, 2025.
8. Gilphine Kaleji Muchinyi's grounds of opposition dated 16<sup>th</sup> September, 2025 are based on the grounds that: the application falls short of the legal requirements necessary for the grant of an order of stay pending appeal; the Applicant has failed to furnish security as mandated by law for the grant of such orders; the Applicant has continued to receive rental income from estate properties and, in the event that the court is inclined to grant the orders sought, she ought to be directed to deposit the said proceeds in court pending the hearing and determination of the appeal; and the application is a belated measure intended to delay the course of justice.
9. Peter Shikuku Muchinyi's grounds of opposition dated 30<sup>th</sup> January, 2026 are based on the grounds that: the Applicant has failed to satisfy the legal threshold necessary to justify the exercise of this Honourable Court's discretion in her favour; the application is brought in bad faith, as it seeks to stay these proceedings on account of an appeal against the ruling delivered on 25<sup>th</sup> January, 2024.
10. However, the application was filed after an inordinate and unexplained delay of approximately one year and four months, which demonstrates an intention to delay the matter and unjustly deny the other parties the benefit of the court's decision, contrary to the principles under Article 159 of the Constitution; the Applicant has failed to demonstrate the substantial loss she stands to suffer if the orders sought are not granted, nor has she shown that any such loss would be incapable of being adequately compensated by damages; the Applicant has also not complied with the legal requirement to furnish security as a condition for the grant of stay orders; and the application is incompetent,



amounts to an abuse of the court process and does not meet the threshold for the grant of the orders sought.

11. Gilphine Kaleji Muchinyi, in her replying affidavit sworn on 30<sup>th</sup> October, 2025, avers inter alia that the application is founded on misrepresentation, falsehoods and material non-disclosure intended to mislead the court.
12. She contends that the application is an afterthought filed long after the ruling of 25<sup>th</sup> January, 2024, by which time the estate property, namely L.R. No. Tassia 97/56, had already been subdivided and portions registered in the respective parties' names, with the Applicant currently in possession of the Karen property.
13. She further states that the court had already determined the distribution of the Karen property, allocating one-third to the Gilphine Kaleji Muchinyi and two-thirds to Juliana Nafula Muchinyi; and directed that valuation be undertaken. She depones that the Applicant has failed to satisfy the conditions for grant of stay pending appeal, including demonstrating an arguable appeal or substantial loss and instead, continues to derive rental income from the Karen property to the exclusion of other beneficiaries.
14. She asserts that the Applicant's claim of imminent eviction is unfounded and merely intended to mislead the court.
15. In her view, if the court is inclined to grant stay, it should direct that all rental income be deposited in court or in a joint escrow account pending determination of the appeal. The respondent further avers that the Applicant has leased out portions of the property, including to a car wash business and other tenants, generating substantial monthly income and that such proceeds ought to be accounted for.
16. She maintains that the Applicant's conduct demonstrates inequitable dealing with the estate and undermines her entitlement to discretionary relief. Accordingly, she urges the court to dismiss the application with costs for being unmeritorious and an abuse of the court process.
17. The Applicant has not filed written submissions.
18. Juliana Nafula Muchinyi has filed written submissions dated 9<sup>th</sup> October, 2025, the Respondents have filed written submissions dated 30<sup>th</sup> October, 2025 and Peter Shikuku Muchinyi has filed written submissions dated 30<sup>th</sup> January, 2026.

### **Analysis And Determination**

19. The court being seized of the matter and has perused the pleadings and the submissions generally considers that the main issue for determination is whether the Applicant has met the legal requirements to get a stay of proceedings and execution while the appeal is pending.
20. The guiding principles on applications for stay of proceedings and execution are that the Applicant needs to show that she filed the application without unreasonable delay, that she would face significant loss if the orders sought are not granted, that her appeal has merit and that she is ready to provide security for the proper execution of the decree. Additionally, the court has to use its discretion wisely, keeping in mind the balance between the right to appeal and the Respondent's right to enjoy the benefits of a lawful judgment.
21. From the record, it is clear that the contested ruling was made on 25<sup>th</sup> January, 2024, while the current application was submitted on 29<sup>th</sup> May, 2025, which means there's been a delay of about one year and four months. The Applicant has not provided a convincing reason for this delay.



22. Moreover, even though she claims that her appeal is valid and that she risks eviction, she has not adequately shown the extent of the substantial loss she might face, especially considering the Respondents' argument that the estate has already been largely managed and that she still occupies part of the property and earns rental income from it. The Applicant has also not offered or suggested any form of security, which is a necessary condition for granting a stay.
23. In *Waweru v Bor & another* [2024] KEHC 6325 (KLR) the court pronounced itself as follows:
- “... 21. The principles guiding stay of proceedings were laid down by a 5-judge Bench of the High Court, after looking at our jurisprudential scan on the question of stay of proceedings in the case of *William Odhiambo Ramogi & 2 Others v the Honourable Attorney General & 3 Others* [2019] eKLR;
- a. First, there must be an appeal pending before the higher Court;
  - b. Second, where such stay is sought in the Court hearing the case as opposed to the higher Court to which the Appeal has been filed and there is no express provision of the law allowing for such an application, the Applicant should explain why the stay has not been sought in the higher Court. This is because, due to the potential of an application for stay of proceedings to inordinately delay trial, there is a policy in favour of applications for stay being handled in the Court to which an appeal is preferred because such a Court is familiar with its docket and is therefore in a position to calibrate any order it gives accordingly;
  - c. Third, the Applicant must demonstrate that the appeal raises substantial questions to be determined or is otherwise arguable;
  - d. Fourth, the Applicant must demonstrate that the Appeal would be rendered nugatory if the stay of proceedings is not granted;
  - e. Fifth, the Applicant must demonstrate that there are exceptional circumstances which make the stay of proceedings warranted as opposed to having the case concluded and all arising grievances taken up on a single appeal; and
  - f. Sixth, the Applicant must demonstrate that the application for stay was filed expeditiously and without delay.
22. In the same vein, in *Halsbury's Laws of England*, 4th Edition, Vol. 37 at p. 330: “The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the Court's general practice is that a stay of proceedings should not be imposed unless the proceedings, beyond reasonable doubt, ought not to be allowed to continue....This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases...It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The Applicant for a stay on this ground must show not merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of this case.”
23. From the foregoing authorities, it is evident that the stay of proceedings is a radical measure which is only exercised in the most of deserving cases. This is a discretionary power that is exercised by the court sparingly. Hence, granting stay of proceedings pending an appeal over interlocutory matters is decided on the facts of each case and with “due regard to the salutary



general rule that appeals are not entertained piecemeal.” See *Walhaus & Others v Additional Magistrate, Johannesburg & Another*, 1959 (3) SA 113(A) at 120D...”

24. In *Mwatha v Karanja* [2025] KEHC 6146 (KLR) the court pronounced itself as follows:
- “... 5. I have considered the application, the affidavit in support thereof, the replying affidavit and the submissions filed by the parties. What this court is tasked to determine is whether the Appellant has satisfied the criteria and/or conditions for grant of an order of stay of execution pending appeal.
  6. Order 42 Rule 6(2) of the Civil Procedure Rules sets out the three conditions to be satisfied by an Applicant for an order of stay of execution pending appeal to be granted.
  7. The first condition under the rule is that the application for stay pending appeal must have been brought without unreasonable delay. I note that the judgement upon which the order for stay pending appeal is sought was entered on 5<sup>th</sup> February, 2024 and that the application that is the subject of this ruling was filed on 31<sup>st</sup> August, 2024....
  11. The second condition under the rule touches on substantial loss that the Applicant stands to suffer if stay of execution is not ordered. On this, the Applicant submitted that the decree will be executed if stay of execution is not ordered and that the same will occasion him irreparable loss.
  12. The Applicant conveyed his apprehension that should his appeal eventually succeed, he is unlikely to recover the decretal sum if execution proceeds.
  13. The question as to who bears the burden of proof on the issue of refund in the event of a successful appeal was discussed in the case of *National Industrial Credit Bank Limited v Aquinas Francis Wasike & another* [2006] eKLR, in which the court observed as follows: “Once an Applicant expresses a reasonable fear that a Respondent would be unable to pay back the decretal sum, the evidential burden must then shift to the Respondent to show what resources he has since that is a matter which is peculiarly within his knowledge....” ...

#### SUBPARA 15.

The third and final condition is the provision of security for the due performance of the decree. On this, the Appellant does not state in his affidavit in support of the motion or his further affidavit that he is ready and willing to provide security. He has therefore not satisfied the third condition...”

25. Looking at the facts herein and in light of the above cited authorities I find that the Applicant has not fulfilled the essential requirements for grant of stay of proceedings and execution pending appeal. Notably, the application was submitted after a significant and unexplained delay of about one year and four months, which goes against the obligation that such applications should be made promptly.
26. Additionally, the Applicant has not shown any substantial loss that would occur if the orders are not granted, relying instead on vague claims of potential eviction, especially considering the uncontroverted averments that she still occupies part of the estate and continues to earn rental income from it.
27. Furthermore, the Applicant has not provided any form of security to ensure compliance with the ruling delivered on 25<sup>th</sup> January, 2024, which is a necessary condition under Order 42 Rule 6 (2) (b) of the Civil Procedure Rules. This failure is critical to the application.



28. Also, the specifics of this case do not reveal any exceptional circumstances that would justify granting a stay of proceedings, which is a serious remedy that should be used cautiously. I am, therefore, not convinced that the appeal would be rendered meaningless if the proceedings continue, especially since the estate has already been largely administered.
29. The application dated 29<sup>th</sup> May, 2025 is hereby dismissed for lack of merit.
30. Each party to bear its costs.

**DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 9<sup>TH</sup> DAY OF APRIL 2026.**

**H K CHEMITEI**

**JUDGE**

