



**In re Estate of Raibu Mithaiba Muchiri (Deceased) (Family Appeal E006 of 2025) [2026] KEHC 4666 (KLR) (13 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 4666 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
FAMILY APPEAL E006 OF 2025  
SM GITHINJI, J  
APRIL 13, 2026**

**IN THE MATTER OF THE ESTATE OF RAIBU MITHAIBA MUCHIRI (DECEASED)**

**BETWEEN**

**PURITY KAMBURA ..... APPELLANT**

**AND**

**GEORGE KATHAWE KANYITHIA ..... RESPONDENT**

**RULING**

1. For determination is the Notice of Motion dated 30/7/2025 under Order 42 Rule 6, Order 51 Rule 1 of the Civil Procedure Rules and Sections 3A, 3 & 63 (e) of the *Civil Procedure Act*, seeking that:
  1. Spent
  2. Spent
  3. Spent
  4. Pending the hearing and determination of the appeal, this honourable court be pleased to order stay of execution of entire judgment of Hon Y.K. Agwata in Tigania senior principal magistrate's court succession cause No. E066 of 2021 which was delivered on 5<sup>th</sup> March, 2025.
  5. The honorable court be pleased to make such further orders as it may deem just and expedient in the circumstances of this application.
  6. The costs be in the cause.
2. The application is premised on the grounds that the Appellant is the only biological child of the deceased herein, and was thus the only one entitled to the estate. She faces the imminent risk of eviction from Akithi 11/600, where she has resided for the past 30 years, unless the stay sought is granted.



3. The Respondent swore a replying affidavit on 21/8/2025 in opposition to the application. He avers that he is a son of the deceased, and the application is a ploy to deny the rightful beneficiaries their share of the estate. The Appellant has not demonstrated any threatened eviction from the land and thus the application ought to be dismissed with costs.
4. The application was canvassed by way of written submissions, which were filed by counsel.

### **Determination**

5. Order 42 Rule 6 (2) of the Civil Procedure Rules provides as follows;

“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 application was filed on 30/7/2025, while the impugning judgment was delivered on 5/3/2025. That delay of 4 months is not manifestly inordinate to be deemed unreasonable.
7. The cornerstone consideration in every application for stay is substantial loss, and the burden of proof lies on the Applicant, as was held by the Court of Appeal in Kenya Shell Limited v Benjamin Karuga Kibiru & another [1986] KECA 94 (KLR) that; “It is usually  

a good rule to see if order XLI rule 4 of the Civil Procedure Rules can be substantiated. If there is no evidence of substantial loss to the applicant, it would be a rare case when an appeal would be rendered nugatory by some other event. Substantial loss in its various forms, is the corner stone of both jurisdictions for granting a stay. That is what has to be prevented. Therefore without this evidence it is difficult to see why the respondents should be kept out of their money.”
8. The Appellant contends that she risks being evicted from the estate property unless the stay sought is granted, which contention the Respondent has vehemently refuted.
9. It’s not in dispute that the Applicant is in occupation of land parcel Akithi 11/600 where she claims to have been in occupation for the past 30 years. If evicted she’ll therefore suffer substantial loss.
10. I accordingly find the application merited and is allowed in terms of prayer 4 on the Notice of Motion dated 30/7/2025.
11. Costs be in the cause.
12. The record of Appeal be prepared and served within 30 days from the date hereof and the matter be mentioned for further directions on 21/5/2026.

**DATED AND DELIVERED AT MERU THIS 13<sup>TH</sup> DAY OF APRIL, 2026.**

**S.M. GITHINJI- JUDGE**

**13/4/2026**

In the presence of:-



1. Purity Kambura
2. George Kathawe Kanyithia

