



**Kamau v Kamau (Probate & Administration 12 of 2019)
[2026] KEHC 4584 (KLR) (9 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 4584 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
PROBATE & ADMINISTRATION 12 OF 2019**

TW OUYA, J

APRIL 9, 2026

BETWEEN

VICTOR MWANGI KAMAU APPELLANT

AND

JAMES MWANGI KAMAU RESPONDENT

RULING

1. The Applicant Eilson Machanga Kamau moved this Court through a Notice of Motion Application dated 26th June 2024 which is expressed to be premised under Rule 63 of the Probate and Administration Rules as read together with Section 3A of the *Civil Procedure Act*, Order 24, Order 51 Rule 1 and Order 42 Rule 6 of the Civil Procedure Rules craving the following reliefs as against the Respondent:
 - i. That the Court be pleased to substitute Wilson Machanga Kamau in place of Victor Mwangi Kamau.
 - ii. That there be a stay of execution of the Judgment delivered on 1st October 2019 till this Application is heard and determined and until the Appeal is heard and determined.
 - iii. That the compensation and payment of dues of land parcel Maragua Ridge/370 be held in a joint interest-earning account in the names of the parties until the appeal is heard and determined.
 - iv. Any other relief this honourable Court may deem fit to grant.
 - v. Costs be in the cause.
2. The Application is premised on the following grounds enumerated on its face: firstly, that the Appellant died on 26th April 2021. Secondly, the Applicant herein petitioned for and obtained Letters of Administration ad litem dated 20th February 2024 in respect of the Appellant's Estate and it is in the



interests of justice that the Applicant be enjoined as a party to the suit. Furthermore, that the deceased property being land parcel number MARAGUA RIDGE/370 (the suit property) has been identified as the site for the construction of a sewerage plant by official of Athi Water Works Development Agency and an agreement has been executed in respect of the same, hence, the Applicant is apprehensive that payments thereto might be made to the wrong parties. Finally, that pending the determination of the subject appeal, it is only fair that all dues in respect of the acquisition of the suit land be deposited in an interest-generating account.

3. The Application is further supported by the Affidavit sworn by the Applicant on 16th June 2024.
4. The Respondent resisted the instant Applicant through a Replying Affidavit dated 8th November 2024 wherein he deposed that he is the Administrator of the Estate of the Charles Kamau Samuel Kangangi as attested to by the annexures marked “JMK1” being a copy of grant of Letters of Administration dated 8th October 2020 and “JMK2” being a Certificate of Confirmation of Grant dated 9th September 2020, appointing and confirming the Respondent as the Legal Representative of the Estate of Charles Kamau Samuel Kangangi.
5. Furthermore, that land parcel number MARAGUA RIDGE/370 comprises of family property which is incapable of distribution of distribution without the consent of all members of the family of Charles Kamau Samuel Kangangi. The Respondent refuted the Applicant’s contention that the suit land is the subject of planned acquisition by Athi Water Works Development Agency for the development of a sewerage plant and accused the Applicant of misleading the Court in making the claim.
6. The Application was canvassed by way of written submissions. Through his counsel, the Applicant lodged written submissions dated 30th May 2025 wherein he relied on grant of letters of administration Ad Litem dated 20th February 2024 in support of the argument that he was entitled to substitute the Appellant in the suit before the Court. With regard to the prayer for stay of execution of the judgment dated 1st October 2019 pending appeal, reliance was placed on the provisions of Order 42 Rule 6(2) of the Civil Procedure Rules as enunciated by the Court in the case of *RWW v EKW* [2019].
7. The Respondent filed written submissions dated 1st July 2025 through his counsel wherein he subscribed to the position that although the Appellant filed his Appeal on 23rd October 2019 challenging the decision delivered on 1st October 2019, he failed to prosecute the same until his death on 26th April 2021. Furthermore, that the Appeal filed on 23rd October 2019 was dismissed by this Court (Sifuna, J) on 16th January 2023 pursuant to the provisions of Order 17 Rule 2 (5) of the Civil Procedure Rules.
8. Having summarized parties’ rival submissions regarding the application before the Court dated 26th June 2024, the following issues are isolated for resolution by the Court:
 - i. Whether the prayer for substitution is merited
 - ii. Whether execution of the decision of the trial Court ought to be stayed pending appeal
 - iii. Who shall bear the costs of the Application.
9. In his Supporting Affidavit dated 16th June 2024, the Applicant annexed, inter alia, a copy of a Limited Grant of Letters of Administration Ad Litem in respect of the Estate of Victor Mwangi Kamau dated 20th February 2024 issued by this Court (Githua, J.). The aforesaid Limited Grant of Letters of Administration Ad Litem authorizes the Applicant to substitute the deceased in the subject suit and to render a true and just account of the deceased’s Estate whenever required to do so by law.



10. The suit property being land parcel number MARAGUA RIDGE/370 is listed in the Certificate of Confirmation of Grant dated 9th September 2020 as one of the assets belonging to the Estate of Charles Kamau Samuel Kangangi and whose Legal Representative is the Respondent herein.
11. The Respondent argued and submitted that the Applicant is not interested in reviving the aforementioned appeal as his only interest is to dispose the subject land. The Court is unpersuaded by the position adopted by the Respondent which it finds to be speculative. It is evident from the grant of Letters of Administration Ad Litem dated 20th February 2024 that the Applicant was authorized by the Court to substitute Victor Mwangi Kamau for purposes of the present suit. In the premises, the Court hereby allows the prayer for substitution as prayed by the Applicant.
12. Turning to the issue of the appeal dated 23rd October 2019 which was filed on even-date, the Respondent submitted that the aforesaid appeal was dismissed by this Court on 16th January 2023 under the provisions of Order 17 Rule 2 (5) of the Civil Procedure Rules. The Court has carefully perused the entirety of the record supplied by the parties and has not come across any Order dismissing the appeal dated 23rd October 2019. It is the Respondent who asserted that the appeal was dismissed by the Court, thus, it behooved the Respondent to supply the Court with a copy of the decision dated 16th January 2023 dismissing the appeal dated 23rd October 2019 as claimed. In its absence, the Court cannot fathom any basis for entering the finding that the Appeal dated 23rd October 2019 stands dismissed.
13. Both the Applicant and the Respondent expressed considerable anxiety about the alienation of the subject land to an entity known as Athi Water Works Development Agency, for the erection of a sewerage plant thereon. The Applicant was apprehensive that payments thereto might be made to the wrong parties if the subject land is acquired by Athi Water Works Development Agency.
14. While denying the existence of any plans to dispose the suit property, the Respondent annexed to his Replying Affidavit dated 8th November 2024 an undated Letter issued by the Respondent to Athi Water Works Development Agency and bearing the imprint of the receiving stamp of Athi Water Works Development Agency dated 10 July 2024. In the foregoing letter, the Respondent indicated he was aware that some members of his family and the area Chief on the one hand were engaged in negotiations concerning disposal of the suit land with the officers of Athi Water Works Development Agency. The Respondent stated in the aforesaid letter that the suit land was the subject of succession proceedings and the process of its sub-division was incomplete. Furthermore, the subject property is family to be shared equally amongst the beneficiaries of the Deceased Charles Kamau Samuel Kangangi.
15. From the foregoing, it is clear that the Respondent affirmed that negotiations were being undertaken between some of his family members, the area chief and Athi Water Works Development Agency to dispose the subject land. In the event, the Court is minded to intervene to preserve the subject property from dissipation pending the determination of the instant Application and Appeal.
16. The following are the Final Orders of the Court:
 - i. The prayers numbered 1, 2 and 3 in the Application before the Court dated 26th June 2024 are allowed as prayed.
 - ii. Costs to abide the outcome of the Appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 9TH DAY OF APRIL, 2026.

HON. T. W. OUYA



JUDGE

For Applicant – Wilson Kamau

For Respondent – No appearance

Court Assistant - Nyabuto

