



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERUGOYA**  
**CIVIL CAUSE NO. E068 OF 2025**

**PETER MAINA NJOGU.....APPELLANT**

**VERSUS**

**JANE WANJIKU MUCHIRI .....1<sup>ST</sup> RESPONDENT**

**JOSHUA KARANJA NJOGU.....2<sup>ND</sup> RESPONDENT**

**RULING**

- [1] This is a ruling on an application for stay of execution pending hearing and determination of an appeal from the Judgment of the trial court where it confirmed the Letters of Administration and issued a Certificate of Confirmation of Grant dated 13<sup>th</sup> May, 2025.
- [2] The application for stay of execution was filed on 2<sup>nd</sup> December, 2025. The Respondents filed a Replying Affidavits dated 15<sup>th</sup> December, 2025 in joint names of the Respondents who are self-representing.
- [3] The Appellant filed submissions dated 20<sup>th</sup> December, 2025.
- [4] Citing *Regina Kavenya Mutuku & 3 others v United Insurance Co Ltd [2002] KEHC 1114 (KLR)* [Ringera J, as he then was], the applicants urged that the Replying Affidavit of the Respondents which he said had not been signed by the 2<sup>nd</sup> Respondent was invalid and it should be struck out, as an unsigned pleading before the court.
- [5] The Appellant further cites *Wangalwa and Another v. Agnes Naliaka Cheseto (2012) eKLR* and submits that **substantial loss** is the cornerstone of the jurisdiction of the court to stay execution of pending appeal under Order 42 Rule 6 and Rule 5(2) (b) of the Court of Appeal Rules.
- [6] The applicant presents the loss that he is likely to suffer by pointing out that “the Respondents are on the verge of the execution of the Judgment delivered on 13<sup>th</sup> May, 2025 and the Confirmed Grant dated 13<sup>th</sup> May, 2025 by way of Transmission forms, hence the applicant is set to suffer irreparable harm and loss as a result of the execution of the said Judgment which will prevent the applicant from acquiring his rightfully entitled portion of Land Parcel LR Kiine/Kiangai/418 wholly and fully as beneficiary of the deceased”

[7] The backbone of the appeal is that the Respondents are not beneficiaries of the deceased and are, therefore, not entitled to share in his estate.

[8] The Respondents' Replying Affidavit of 15<sup>th</sup> December, 2025 objected to the application for stay of execution primarily on their perception of the merits of the appeal by the applicant who they assert was the applicant for Confirmation of Grant and he gave consent to the mode of distribution of the Estate, as follows:

1. *THAT we are the Respondents in this case hence competent to swear this affidavit.*
2. *THAT we have read and understood the contents of the application dated 2<sup>nd</sup> December, 2025.*
3. *THAT the Appeal lodged by the Applicant has no chances of success because during proceedings of Succession Cause No. 348 of 2023 the Appellant was the Petitioner and he did not file any protests against Confirmation of Grant.*
4. *THAT the Appellant gave consent to the mode of distribution of the Estate.*
5. *THAT the Appellant was the Applicant in the application for Confirmation of Grant.*
6. *THAT the Appellant has no locus standi to appeal against the ruling in succession Cause No. E348 of 2023 for he was the applicant of the application.*
7. *THAT the application for stay of execution has no merits and therefore ought to be dismissed with costs.*
8. *THAT we swear this affidavit in reply to the application dated 2<sup>nd</sup> December, 2025.*
9. *THAT what I have stated herein is true to the best of my knowledge, information and belief.*

[9] While the Court agrees with the proposition that a pleading which is unsigned by a party is invalid and liable to be struck out as happened in **Kavenya** case, supra, the Replying Affidavit in issue here is shown to be signed but the two deponents and properly commissioned by a Commissioner for Oaths on 15<sup>th</sup> December, 2025. It could be that the applicant was served with a copy which had not been signed by the 2<sup>nd</sup> Respondent but the court copy which is filed on the Court Tracking System on 15<sup>th</sup> December, 2025 at 14.19: 50+3 upon payment of Ksh. 750/- by one Joshua is duly signed by both deponents. The Court must find that the Replying Affidavit of the Respondents is valid and competent.

[10] The Respondents' objection to the application is what the Court shall be called to determine at this hearing of the appeal.

[11] At this stage, in terms of Order 42 Rule 4 of the Civil Procedure Rules, the Court has only to consider whether **substantial loss** has been established to warrant maintaining the status quo pending hearing of the appeal.

[12] The Court considers that if stay is not granted and the Respondents shared in the Estate asset pursuant to the Confirmed Grant subject of the appeal, the applicant would suffer **substantial loss** as his appeal even if successful would be rendered nugatory as the suit parcel of land will have been distributed on transmission and probably transferred by the Respondents and/or other beneficiaries in accordance with the impugned Certificate of Confirmed Grant.

[13] As this court has held before, for progress of Law of Succession to which the provision for stay of execution under Order 42 Rules 6 of the Civil Procedure has not been formally applied/incorporated by **Rule 63 of the Probate and Administration Rules**, the requirement for provision of security before grant of stay of execution in terms of Order 42 Rule 6(2) is not mandatory.

[14] The court's order for stay of execution of the Judgment and distribution of the Estate in accordance with the Confirmed Grant is sufficient security, and upon determination of the appeal the Estate asset shall be available for distribution or disposal as accordance with the order of the Court which may be adjudged and become binding upon the appellant.

#### **ORDERS**

[15] Accordingly, the reasons set out above, the Court finds merit in the application of stay of execution dated 2<sup>nd</sup> December, 2025 and it is granted as prayed in terms of Prayer No. 3 of the Notice of Motion.

[16] The Record of Appeal shall be filed within sixty (60) days.

[17] Directions on the hearing of the appeal shall be taken on **18<sup>th</sup> June, 2026**.

[18] Costs in the cause.

*Order accordingly.*

**DATED AND DELIVERED THIS 16<sup>TH</sup> DAY OF APRIL 2026.**

**EDWARD M. MURIITHI**

**JUDGE**

#### **Appearances:**

Ms. Wandia for Applicant.

Ms. Jane Wanjiku Muchiri the 1st Respondent.

Mr. Joshua Karanja Njogu the 2nd Respondent.