

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAKURU**  
**SUCCESSION CAUSE NO. E123 OF 2024**

**IN THE MATTER OF THE ESTATE OF THE LATE NJERI TARA DAS  
(DECEASED)**

**AND**

**IN THE MATTER OF AN APPLICATION TO STRIKE OUT THE PETITION**

**BETWEEN**

**ASHOK ATMARAM RAMCHANDANI.....APPLICANT**

**VERSUS**

**SYLVIA SUSAN GATHONI SANG.....RESPONDENT**

*(Application for leave to Appeal against this Court's Ruling dated 23<sup>rd</sup> July  
2025)*

**RULING**

1. The Applicant herein moved this Court vide a Chamber Summons dated 28<sup>th</sup> July, 2025 and expressed under Order 42 Rule 6 (1) of the Civil Procedure Rules, Section 47 of the Law of Succession Act, Rule 73 of the Probate and Administration Rules and seeking Orders that:-

- 1) *Spent.*
- 2) *Spent.*
- 3) *That a stay of execution or implementation of the Ruling dated 23<sup>rd</sup> July, 2025, be issued pending the hearing and determination of the intended Appeal.*
- 4) *That the Applicant be granted leave to file an Appeal to the Court of Appeal against the Ruling dated 23<sup>rd</sup> July, 2025. **SPENT***
- 5) *That the costs of the application be provided for.*

2. The Application is based on the grounds on the face of the Notice of Motion and supported by the Applicant's Affidavit sworn on even date. He states

that he is aggrieved by the ruling of this Court on 23<sup>rd</sup> July, 2025 and intends to appeal to the Court of Appeal.

3. He avers that the High Court ordered him to file a Cross-Petition, failing which the Respondent would receive Letters of Administration. Therefore, there is a risk that the Respondent will intermeddle with estate properties to his detriment if the ruling is not stayed.
4. He contends that the Appeal involves serious legal issues; without a stay, the appeal might become useless if the ruling is implemented. He expounds that the Appeal is arguable because there is allegedly no "free property" available in the deceased's estate for distribution.
5. However, that there is no automatic right of appeal in probate matters, making a formal leave from the court a mandatory requirement. On that basis, he states that it is in the interest of justice to stay the ruling and grant leave to appeal.
6. The Applicant undertakes to handle the appeal quickly to avoid causing unfair delays for the Respondent. Reiterating that he will suffer permanent harm if the requested orders are not granted.
7. The Respondent opposed the Application vide her Replying Affidavit sworn on 14<sup>th</sup> October, 2025. She explains that the succession cause was duly filed on 13 August 2024 and that the requisite legal process of advertisement through a Gazette Notice was undertaken, demonstrating procedural compliance.
8. The Respondent asserts that the Applicant's application is made in bad faith, arguing that it is intended solely to delay the proceedings and frustrate her rights as the Respondent.
9. She further states that the Applicant has already filed a cross-petition seeking to be appointed as the sole administrator of the estate, particularly in relation to co-owned properties, and therefore, he stands to suffer no harm as he is already actively participating in the proceedings.

10. It is her position that the Applicant will not suffer any prejudice if the matter proceeds to hearing and determination, as he will have the opportunity to present his grievances before the court during the hearing.
11. The deponent adds that the original title documents are in the Applicant's possession and that no new titles can be issued in her name, thereby dismissing concerns about potential wastage or dissipation of the estate as unfounded.
12. She further faults the Applicant for failing to specify or provide evidence of any alleged acts of wastage or mismanagement of the estate that would justify a stay of proceedings.
13. The affidavit emphasises the importance of expeditiously concluding succession matters so that families can move forward with their lives, arguing against unnecessary delays.
14. She contends that the court should first conclude the succession cause, and only thereafter should any dissatisfied party pursue an appeal, rather than prematurely halting the proceedings.
15. The deponent maintains that the issues the Applicant intends to raise on appeal ought to first be addressed during the main hearing before being escalated to an appellate court.
16. She challenges the Applicant's allegations in his Affidavit that she intends she is likely to intermeddle with the Estate properties, describing them as speculative and unsupported by evidence, and therefore insufficient to justify staying the proceedings.
17. The deponent concludes by asserting that the Applicant's application lacks merit and should be dismissed with costs, allowing the succession cause to proceed to its logical conclusion.
18. Despite Directions issued by this Court as to the filing of responses and submissions, the Applicant never complied. Nevertheless, the Respondent filed her response and submissions.

### **Respondent's Submissions**

19. In her submissions dated 7<sup>th</sup> November 2025, the Respondent contends that the doctrine of exhaustion binds the Applicant and he ought, in the first instance, to ventilate all his grievances before this Court before seeking recourse to the Court of Appeal. In her view, the substantive succession cause has neither been heard nor determined, and the issues now raised by both parties have not been fully canvassed to justify the present application.
20. She further argues that the Applicant appears intent on prematurely stifling the Respondent's participation in the proceedings, thereby denying this Court the opportunity to fully appreciate the status of the estate from its inception to its current state.
21. It is her submission that fairness and justice demand that this Court be apprised of the true position of the estate, including the nature and extent of development of its properties and the respective contributions of the parties, before any legal provisions are invoked to exclude any potential beneficiary from entitlement.
22. The Respondent underscores that the law exists to ensure order in society, particularly in relation to property rights and the administration of estates. She maintains that it would be inimical to justice for the estate of a deceased person to devolve upon a single individual to the exclusion of others, as such an approach would undermine the very purpose of succession law and occasion disorder.
23. She further submits that the so-called "*weighty issues*" that the Applicant purports to raise on appeal have neither been particularised nor demonstrated in the present application. In the absence of such disclosure, those assertions remain bare statements devoid of substantive content.
24. On the allegation of intermeddling, the Respondent contends that the same is wholly speculative and unsupported by evidence. She notes that the Applicant, being in custody of the original title documents, has failed to

demonstrate the nature or extent of the alleged interference with the estate to warrant a stay of proceedings pending appeal.

25. The Respondent further submits that the application is motivated by an intention to delay the expeditious hearing and determination of the succession cause, to her detriment. She therefore urges this Court to dismiss the application and direct that the matter proceed to hearing, on the basis that it is devoid of merit and ought to attract an award of costs.

26. While relying on the decision in **Butt v Rent Restriction Tribunal (1982) KLR 417**, she acknowledges that the grant of a stay is a matter of judicial discretion. However, she maintains that no special or exceptional circumstances have been demonstrated to warrant the exercise of that discretion in favour of the Applicant, nor has any sufficient basis been laid to establish the necessity for a stay. Consequently, she urges that the application be dismissed with costs.

#### **Analysis and Determination**

27. At the Certificate of Urgency stage and upon perusal of the application dated 28<sup>th</sup> July, 2025, this Court granted the Applicant the prayer for leave to appeal to the Court of Appeal but stated that the said leave would not operate as a stay. The contents of that application informed the issuance of the said Order.

28. To be specific, the Directions issued were as follows:-

- 1. The Chamber Summons dated 28/7/2025 is noted and certified as not urgent.**
- 2. Leave to appeal is granted but will not operate as stay.**
- 3. The application be served within 14 days.**
- 4. The Respondent to file and serve a response within 14 days of service.**
- 5. The Applicant at liberty to file and serve a further affidavit within 7 days of service by the Respondent.**

**6. The application be disposed of by way of written submissions with each party having 14 days starting with the Applicant.**

**7. Compliance and further directions on 10/11/2025.**

29. Pursuant to that leave, the Applicant filed a Notice of Appeal dated 12/8/2025. However, this Court notes that the parties herein proceeded to argue on both the issue of leave and stay of execution of the impugned Ruling.

30. Even though the issue of leave is already spent, it is now necessary to emphasise the issue of appeal to the Court of Appeal. In **Rhoda Wairimu Karanja & another v Mary Wangui Karanja & another [2014] KECA 255 (KLR)**, the Court of Appeal held:-

***“...We think we have said enough to demonstrate that under the Law of Succession Act, there is no express automatic right of appeal to the Court of Appeal; that an appeal will lie to the Court of Appeal from the decision of the High Court, exercising original jurisdiction with leave of the High Court or where the application for leave is refused with leave of this Court. Leave to appeal will normally be granted where prima facie it appears that there are grounds which merit serious judicial consideration.”***

31. Further, the Court of Appeal in the case of **Machuka & another v Nyangute & another (Civil Appeal 166 of 2019) [2025] KECA 538 (KLR)** reiterated that position, stating that:-

***“We have deliberately quoted the above decisions extensively in order to appreciate the debate regarding the right of appeal to this court in succession matters, and the varying opinions. In our view, considering the relevant provisions of the law, and the above authorities, the Rhoda Wairimu Karanja decision puts the matter into its proper perspective as the provisions of the Law of Succession Act, should not be inconsistent with the Constitution, and must therefore be interpreted in a way that advances the***

*purposes, values and principles of the Constitution. Therefore, the absence of a provision in the Law of Succession Act for appeals originating from the High Court to this Court does not completely exclude such appeals from this Court. In accordance with the general purport of Article 164(3) of the Constitution, the Court has jurisdiction to hear such appeals from the High Court. However, the right of appeal in such matters is circumscribed to the extent that it is not an automatic right. There must be leave to appeal given either by the High Court or this Court.”*

32. In this case, the Applicant contends that the properties identified as part of the estate devolved solely to him by virtue of his status as a joint tenant with his late wife. He posits that upon her demise, the doctrine of survivorship operated to vest the entirety of the property in him, leaving no "free property" available to constitute an estate for distribution.

33. Consequently, the Applicant argues that the current succession proceedings are fundamentally improper. He further asserts that this Court erred in directing him to file a cross-petition and maintains that these "weighty issues" must be adjudicated by the Court of Appeal.

34. Considering the case law highlighted above and with this Court having dealt with this issue at the certificate stage by granting leave to appeal, the only issue for determination is ***whether this Court can stay execution of the Ruling of this Court rendered on 23<sup>rd</sup> July, 2025.***

35. The principles governing the stay of execution pending appeal are well settled. The Court has discretionary power to determine if special circumstances exist that warrant such an order. In this regard, Order 42 Rule 6 of the Civil Procedure Rules stipulates:-

***“No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but the court appealed from may for sufficient cause order stay of execution of such decree or***

*order and whether the application for such stay shall have been granted or refused by the court appealed from the court to which such appeal is preferred shall be at liberty on application being made to consider such application and to make such order thereon as may to it seem just and any person aggrieved by an order of stay made by the court from whose decision the Appeal is preferred may apply to the appellate court to have such orders set aside. No order for stay of execution shall be made under sub rule 1 unless:-*

*(a)The Court is satisfied that substantial loss may result to the 1<sup>st</sup> 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.”*

36.The law is clear that the onus of proving substantial loss rests squarely upon the Applicant, and this burden must be discharged with specificity. It is insufficient to assert that loss is likely to be suffered merely; the Applicant must demonstrate that such loss will, indeed, be occasioned.

37.In the present application, the Applicant contends that if a stay is not granted, the Respondent is likely to obtain Letters of Administration and proceed to administer the estate to his exclusion, thereby causing him loss. Conversely, the Respondent maintains that no such loss will be suffered. She argues that because the Applicant remains in sole possession and custody of all original title documents for the estate properties, she is practically unable to deal with or intermeddle in the estate.

38.Upon consideration of these rival positions, this Court notes that while the properties are registered in the names of the Applicant, the substantive issue of ownership, and whether these properties truly constitute "free property" of the estate, is yet to be determined by a full hearing of the Succession Cause. The Applicant's apprehension that the Respondent will "waste away"

the estate remains speculative and is not supported by the evidence before this Court , particularly given that the Applicant holds the instruments of title.

39. Further, the Applicant has already filed on 1<sup>st</sup> September 2025, a Petition by way of Cross -Application dated 29<sup>th</sup> August 2025 in compliance with the Directions issued by this Court in the impugned Ruling dated 23<sup>rd</sup> July 2025. In further compliance, and on the same date, is his Answer to Petition for Grant of Letters of Administration Intestate. In the circumstances herein, this Court finds that the Applicant has failed to establish a basis for this Court to exercise its discretion in favour of a stay.

40. Ultimately, this Court makes the following Orders:-

- 1. The Application for leave to appeal to the Court of Appeal is spent.**
- 2. The Applicant's prayer for Stay of Execution of the Ruling dated 23<sup>rd</sup> July 2025 is disallowed.**
- 3. The Costs of this Application shall be in the cause.**

**Dated, signed and delivered at Nakuru this 20<sup>th</sup> Day of April, 2026.**

**PATRICIA GICHOHI**

**JUDGE**

**N/A by Respondent**

**N/A by Applicant**

**Erikson , Court Assistant**