In re Estate of JK Arap L (Deceased) (Succession Cause E012 of 2023) [2026] KEHC 4409 (KLR) (31 March 2026) (Ruling)

Neutral citation: [2026] KEHC 4409 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KERICHO

SUCCESSION CAUSE E012 OF 2023

JK SERGON, J

MARCH 31, 2026

IN THE MATTER OF THE ESTATE OF JKAL (DECEASED)

BETWEEN

ACN ..... ADMINISTRATOR

AND

NCL ..... OBJECTOR

RULING

1. Before this Court for determination is a Notice of Motion dated 17th February 2026 filed by the Objector/Applicant, Agnes Chebet Ng'etich. The application seeks the following principal orders:

   (a) Spent.

   (b) Spent.

   (c) That pending the hearing and determination of the intended appeal, the Court be pleased to grant stay of execution of the ruling dated 18th December 2025.

   (d) That this Honorable Court be pleased to enlarge and/or extend time for the Applicant to appeal against the whole of the Ruling and Orders delivered on 18th December 2025.

   (e) That the costs of this application be in the cause.

2. The application is supported by the grounds set out on the face thereof and by the Supporting Affidavit of the Applicant sworn on 17th February 2026. The application is opposed by the Respondent, Naomi Chepkorir Langat, who filed a Replying Affidavit sworn on 24th February 2026.

3. This matter arises from succession proceedings concerning the estate of Joel Kimetet Arap Langat (the Deceased). Prior to the instant application, this Court delivered a ruling on 18th December 2025

in which it allowed the Administrator's application dated 15th November 2024. The Court directed that the three children of the Objector, namely Brenda Ivy Chelangat, Brian Davis Metet, and Britney Cherotich Langat, undergo a sibling DNA test with the daughter of the Administrator, Sharon Cheruto Langat, for the purpose of determining whether they share the same father.

4. The ruling was delivered in the presence of counsel for both parties. Pursuant to that ruling, the Administrator proceeded to coordinate with the Kenya Medical Research Institute (KEMRI) to facilitate the DNA sampling exercise. KEMRI scheduled the exercise for 16th February 2026. On that date, the Administrator's daughter attended KEMRI as directed. However, the Objector and her children failed to attend.

5. The Objector subsequently filed the instant application on 17th February 2026, seeking stay of execution and extension of time to appeal against the ruling of 18th December 2025.

6. The Applicant contends that she is aggrieved by the ruling of 18th December 2025 and intends to appeal against the same. She states that the timeframe within which to appeal has since lapsed and prays that this Court enlarges time for her to file her appeal out of time.

7. The Applicant explains the delay on the grounds that the ruling was delivered at the commencement of the December recess and festive season, and that her advocates' offices were closed for the holidays, making it impossible to coordinate legal instructions until late January 2026. She further states that one of her children, Brenda Ivy Chelangat, is currently residing in Australia where she is enrolled in full-time studies, and that immediate compliance with the DNA testing order has been rendered difficult and prejudicial.

8. On the prayer for stay of execution, the Applicant argues that unless stay is granted, the DNA testing will proceed and her intended appeal will be rendered nugatory. She asserts that the DNA testing is intrusive and permanently infringes upon the bodily integrity, dignity, and privacy of her children. She further states that the Respondent began the execution process and demanded that the children be availed at KEMRI on 4th February 2026 and subsequently on 11th February 2026.

9. The Applicant contends that she has an arguable appeal with high chances of success, raising a novel issue of whether a court can order paternity DNA testing using a reference sample whose own paternity has not been legally or scientifically established.

10. The Respondent opposes the application through a replying affidavit dated 24th February 2026. She states that the ruling was delivered on 18th December 2025 in the presence of counsel for both parties, and therefore the Applicant was fully aware of the Court's determination and its import. The Respondent contends that the explanation for delay is unsatisfactory and an afterthought.

11. The Respondent depones that in faithful compliance with the ruling, she initiated the execution process and engaged KEMRI to facilitate the DNA exercise. KEMRI scheduled the sampling exercise for 16th February 2026. On that date, her daughter attended KEMRI ready and willing to comply, but the Applicant and her children failed to attend. The Respondent has annexed official confirmation from KEMRI evidencing this fact.

12. The Respondent further states that prior to the scheduled DNA exercise, the Applicant's advocates had corresponded with her regarding the modalities of compliance, and none of that correspondence disclosed any intention to appeal. The Respondent argues that the alleged intention to appeal only surfaced after execution had commenced and after the Applicant failed to attend the KEMRI exercise.

13. The Respondent points out that the Applicant has not annexed any draft Memorandum of Appeal to the application, and therefore this Court is unable to assess whether there exists any arguable appeal.

She contends that a bare statement of intention to appeal, without exhibiting proposed grounds, is insufficient in law.

14. The Respondent submits that the Applicant has failed to satisfy the well-settled principles governing the grant of stay pending appeal. In particular, she argues that no substantial loss has been demonstrated, the intended appeal is speculative, the balance of convenience favors implementation of the Court order, and the application is a calculated attempt to delay the just determination of the succession cause.

15. The Respondent concludes that the Applicant cannot seek the Court's discretion while remaining in open non-compliance with a subsisting court order, and prays that the application be dismissed with costs.

16. Having carefully considered the application, the affidavits on record, the following issues arise for determination;

    (a) Whether the Applicant has made out a case for extension of time to file an appeal out of time.

    (b) Whether the Applicant has satisfied the conditions for grant of stay of execution pending appeal.

    (c) Who shall bear the costs of this application.

17. The power of this Court to extend time for filing an appeal is discretionary. The discretion is unfettered but must be exercised judiciously and upon reasonable grounds. In Leo Sila Mutiso v Rose Hellen Wangari Mwangi [1999] eKLR, the Court of Appeal held that the factors to be considered in an application for extension of time include the length of the delay, the reasons for the delay, the chances of the appeal succeeding, and the degree of prejudice to the respondent if the application is granted.

18. In the instant case, the ruling sought to be appealed against was delivered on 18th December 2025. The Applicant filed the instant application on 17th February 2026, seeking extension of time to appeal. The delay is approximately two months from the date of the ruling.

19. The Applicant attributes the delay to the December recess and festive season, during which her advocates' offices were closed, and the fact that one of her children is residing in Australia. However, I note that the ruling was delivered in the presence of counsel for both parties. The Applicant was therefore immediately aware of the Court's determination. The December recess, while a legitimate factor, does not entirely explain the period from mid-January 2026 to mid-February 2026, during which the Applicant was actively engaging with the Respondent on modalities of compliance rather than taking steps to appeal.

20. More significantly, the Applicant has not annexed a draft Memorandum of Appeal to her application. While this is not an absolute requirement, the absence of a draft appeal makes it difficult for the Court to assess whether the intended appeal is arguable. The Applicant merely states in her supporting affidavit that the appeal raises a novel issue regarding the propriety of ordering DNA testing using a reference sample whose own paternity is disputed. However, without a draft memorandum setting out the proposed grounds, the Court cannot properly evaluate the arguability of the intended appeal.

21. In Waweru Koinange & Another v Mary Njeri Koinange [2015] eKLR, the Court of Appeal emphasized that while the Court will not conduct a mini-trial on the merits of the intended appeal, there must be sufficient material to demonstrate that the intended appeal is not frivolous. In this case, the Applicant has not provided the Court with the necessary material to make that assessment.

22. Furthermore, the Applicant's conduct prior to filing this application is telling. The Respondent has annexed correspondence from the Applicant's advocates which discusses the modalities of compliance with the DNA testing order. This correspondence is dated after the delivery of the ruling and contains no indication that the Applicant intended to appeal. The Applicant only raised the issue of an intended appeal after failing to attend the scheduled DNA exercise on 16th February 2026. This sequence of events suggests that the application for extension of time is an afterthought, precipitated by the imminent execution of the Court order rather than a genuine intention to challenge the ruling on its merits.

23. Accordingly, I am not satisfied that the Applicant has provided sufficient justification for the delay or demonstrated that the intended appeal is arguable. The application for extension of time to appeal therefore fails.

24. Even if the application for extension of time were to be considered favorably, the Applicant must still satisfy the conditions for grant of stay of execution pending appeal. These conditions are set out in Order 42 Rule 6(2) of the Civil Procedure Rules, which provides:

    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;

    (b) the application has been made without unreasonable delay; and

    (c) 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.

25. The Applicant contends that unless stay is granted, the DNA testing will proceed and her intended appeal will be rendered nugatory. She also argues that the DNA testing is intrusive and infringes upon the bodily integrity of her children.

26. However, several factors militate against the grant of stay. First, the application was made after the scheduled DNA exercise had already taken place. KEMRI had set the sampling date for 16th February 2026. The Applicant filed this application on 17th February 2026, one day after the scheduled exercise. The Respondent has annexed confirmation from KEMRI showing that she attended with her daughter on that date, while the Applicant failed to attend. At that time, there was no stay order in place. The Applicant's failure to attend the scheduled exercise demonstrates a disregard for the Court's order and undermines her entitlement to the equitable relief of stay.

27. Second, the Applicant has not demonstrated substantial loss. The DNA testing is a scientific process intended to assist the Court in determining the true beneficiaries of the estate. Any inconvenience occasioned by the testing does not, without more, amount to substantial loss. Moreover, the Applicant has not offered any security as required under Order 42 Rule 6(2)(c). Her bare statement of willingness to comply with any conditions is insufficient.

28. Third, the balance of convenience favors the implementation of the Court order. The succession cause has been pending, and the determination of the rightful beneficiaries is central to its just resolution. The DNA testing was ordered to facilitate that determination. The Applicant's delay and non-compliance serve only to prolong the proceedings to the prejudice of the estate and all parties involved.

29. In Kenya Shell Limited v Benjamin Karuga Kigibu & Ruth Wairimu Karuga [1986] eKLR, the Court of Appeal held that the discretion to grant stay pending appeal must be exercised in a way that does not prevent an appeal from being rendered nugatory, but also must balance the interests of the parties. In this case, the Applicant has failed to show that her appeal, if filed, would be rendered nugatory.

The DNA testing is a factual process that, once completed, does not preclude the Applicant from challenging the ruling on legal grounds.

30. For these reasons, the application for stay of execution also fails.

31. Costs are at the discretion of the Court. The Applicant's application has been unsuccessful, and the Respondent has been put to unnecessary expense in opposing it. In the circumstances, I order that the costs of this application be borne by the Applicant.

32. For the reasons set out hereinabove:-

    (a) The Notice of Motion dated 17th February 2026 is hereby dismissed.

    (b) The Applicant shall bear the costs of this application.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 31ST DAY OF MARCH, 2026

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J. K. SERGON

JUDGE

In the presence of:

C/Assistant – Rutoh

No Appearance