



REPUBLIC OF KENYA



KENYA LAW
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**Mbugua v Mbugua (Civil Application E117 of 2025)
[2026] KECA 706 (KLR) (25 March 2026) (Ruling)**

Neutral citation: [2026] KECA 706 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E117 OF 2025
DK MUSINGA, M NGUGI & GV ODUNGA, JJA
MARCH 25, 2026**

BETWEEN

GEORGE GATHERU MBUGUA APPLICANT

AND

MARY MUKAMI MBUGUA RESPONDENT

(Being an Application for an injunction and stay of execution pending the hearing and determination of an appeal against the judgment delivered on 3rd July, 2024 by Riechi, J. and the resultant orders issued in the High Court of Kenya at Nairobi in Succession Cause No. 3380 of 2014)

RULING

1. The applicant, George Gatheru Mbugua and the respondent, Mary Mukami Mbugua, are brother and sister and two of the four administrators of the estate of Samuel Gatheru Mbugua (Deceased). They are also beneficiaries of the estate of the deceased, who died on 20th January 2006. As so often happens, contestation over the distribution of his estate appears to have torn the family asunder. In a judgment by the High Court (Riechi, J) dated 3rd July 2024, orders were made for distribution of the estate in accordance with the mode of distribution proposed by the respondent, Mary Mukami Mbugua.
2. The court noted that the mode of distribution proposed by the appellant had not been signed by all the beneficiaries as he alleged; while the mode of distribution proposed by the respondent was supported by the majority of the beneficiaries, proposed distribution of the estate equally between the beneficiaries, and was in accordance with the wishes of their deceased mother.
3. The applicant was dissatisfied with the judgment and has filed the application dated 27th February 2025 under, inter alia, rule 5(2)(b) of this [Court's Rules](#). He seeks, in the main, stay of execution of the judgment dated 3rd July 2024 and a temporary injunction restraining the respondent from interfering



with the estate of the deceased pending the hearing and determination of his appeal, Civil Appeal No. E033 of 2025.

4. The application is supported by an affidavit sworn by the applicant on 27th February 2025. In the grounds in support of the application as set out on its face and the affidavit in support, the applicant contends that the trial court distributed the estate of the deceased in accordance with the mode of distribution proposed by the respondent and disregarded his proposal on grounds that it was not signed by all the beneficiaries; and that it did not distribute the estate fairly amongst the beneficiaries which, according to the applicant, did not reflect the true position.
5. He asserts that the mode of distribution that he filed was signed on 9th June 2019 by all the surviving beneficiaries of the estate of the deceased; that the mode of distribution proposed by the respondent was only consented to by eight beneficiaries out of eleven; and that ‘the consent adopted in this Honourable Court’ does not take into account the issues of all the beneficiaries but a percentage of them, thereby prejudicing those who did not consent to the respondent’s mode of distribution. He avers that the mode of distribution proposed by the respondent was denied by Muchelule, J (as he then was) in a ruling dated 7th February 2022.
6. The applicant asserts that the trial court failed to appreciate his proposed mode of distribution despite the proposal having been consented to and signed by all the eleven surviving beneficiaries, and which proposals were based on a family agreement dated 9th June 2019; that Muchelule, J had held that the estate of the deceased should remain intact; and that a report on the management of the estate of the deceased be filed periodically before the court to determine the net assets and liabilities of the estate.
7. He contends that the decision of Riechi, J. failed to address the issue of assets and liabilities, yet the report that he had filed contains crucial information which the court ought to have taken into account before making the decision on the mode of distribution, which he avers has net liabilities of over Kshs. six million; that the applicant, one of the administrators, has been managing the estate with two of his brothers; but that the trial court failed to address the issues of assets and liabilities, even though the applicant had filed a statement of the financial position of the estate of the deceased.
8. The applicant avers that the trial court misdirected itself in finding that the respondent had established special and exceptional circumstances to warrant adoption of her mode of distribution, yet the said distribution was adopted from the purported Will made by their late mother, while the deceased died intestate. The applicant avers that after the judgment, the respondent has written to him through her Advocate seeking to be supplied with the original titles to the suit properties listed in the mode of distribution, with the aim of distributing the estate as ordered by the trial court; that the respondent is able to execute the said orders and dispose of the assets of the deceased while he has already lodged an appeal to this Court; that he is apprehensive that if a stay of execution is not granted and the status quo maintained, the respondent will proceed to distribute the estate, to the detriment of the other beneficiaries. He asserts that he has an arguable appeal with a high probability of success, and if the orders sought are not granted, the appeal will be rendered nugatory.
9. The respondent opposes the application by her affidavit sworn on 24th March 2025. She avers that the applicant stayed and worked in the United States of America, returning home one year before the demise of their mother; objected to their mother being made the administrator of the deceased’s estate; that nonetheless on 13th March 2019, Muchelule, J confirmed the grant in her favour; that upon her death on 2nd April 2021, the applicant again opposed an application to appoint new administrators. According to the respondent, during the hearing of the application, the court asked the beneficiaries to file their affidavits on how they would want the estate to be distributed. She avers that on 13th December 2022, out of the eleven beneficiaries, eight, as well as two children of one of the deceased children of the



- deceased, signed a document on how they wanted the estate to be distributed. The respondent avers that the applicant did not file any document or affidavit on how he wished to have the estate distributed.
10. The respondent further avers that in the judgment dated 3rd July 2024, the trial court rectified the confirmed grant and provided for all the beneficiaries equally. She asserts that the applicant has therefore perjured himself by saying that beneficiaries signed a document on 9th June 2019 agreeing on the mode of distribution because the document dated 9th June 2019, which is denied by the rest of the beneficiaries, could not have been signed for the purposes of this particular succession as the beneficiaries' mother, Margaret Njeri Mbugua and two of the beneficiaries, now deceased, were all still alive; and that the applicant did not file the alleged mode of distribution or any other for the court to consider before the judgment of 3rd July 2024 as directed by the court. The respondent avers that eight out of eleven beneficiaries filed their mode of distribution on 13th December 2022 and personally appeared in court for the hearing; and that since the majority of eight beneficiaries signed on how the estate should be distributed while three did not and did not appear in court, the trial court cannot be faulted for allowing the distribution that it felt shared out the estate equally among all the beneficiaries.
 11. The respondent observes that the applicant has not told the Court how he is prejudiced by the distribution of the estate as ordered by the Court on 3rd July 2024; and that the applicant does not want the estate distributed so that he can continue to devour the estate by himself as he is staying on the property and has refused to grant the other beneficiaries access to the home and the entire estate of the deceased.
 12. The parties to the application were acting in person. The applicant filed submissions dated 8th May 2025 but did not appear for the hearing of his application, though duly served. The respondent filed submissions dated 12th January 2026 which she briefly highlighted at the hearing of the application.
 13. We have considered the application, the affidavits in support and opposition thereto, and the submissions of the parties. This being an application under rule 5(2)(b) of this *Court's Rules*, the applicant is required to satisfy the Court on two well-settled principles. First, the applicant must demonstrate that the appeal (or the intended appeal) is arguable. In other words, that it is not frivolous.
 14. Secondly, the applicant must show that unless the order of stay of execution or injunction sought is granted, the appeal, if it eventually succeeds, would be rendered nugatory- see *Stanley Kang'ethe Kinyanjui v Tony Ketter & 5 others* [2013] KECA 378 (KLR) and *Regnoil Kenya Limited v Winfred Njeri Karanja* [2019] KECA 714 (KLR). As these authorities emphasise, an arguable appeal is one that raises a question deserving consideration by the Court, and need not be one that will necessarily succeed. Further, that the term 'nugatory' has to be given its full meaning and does not only mean worthless, futile, or invalid but also means trifling; that whether or not an appeal will be rendered nugatory depends on whether or not what is sought to be stayed, if allowed to happen, is reversible, or if it is not reversible, whether damages will reasonably compensate the party aggrieved. Finally, that in considering whether an appeal will be rendered nugatory, each case must depend on its facts and peculiar circumstances.
 15. In his memorandum of appeal, the applicant raises several grounds, amongst others, that the learned Judge erred in both law and fact in disregarding the ruling delivered on 7th February 2022 by Muchelule, J, a holding that recognized that the deceased died intestate and the estate could not be distributed based on a written Will by one beneficiary of the estate; misdirected himself in both law and fact in finding that the respondent had established special and exceptional circumstances to adopt her mode of distribution of the estate based on the purported Will, whereas the deceased died intestate; and in disregarding the appellant's proposed mode of distribution based on a family agreement dated 9th June 2019, consented to by all the thirteen (sic) beneficiaries.



16. Given the threshold set with respect to what amounts to an arguable appeal, one might say that the applicant has an arguable appeal. However, we note that the crux of the applicant's case is that the deceased died intestate. The deceased's spouse died in 2021. The impugned decision of Riechi, J distributed the estate of the deceased equally between the beneficiaries, which accords with the provisions of section 38 of the *Law of Succession Act*. The arguability of the applicant's appeal is, therefore, doubtful. We shall, however, say no more about the issue at this stage.
17. The applicant is also required to satisfy the Court that, absent the orders sought, his appeal will be rendered nugatory. In asserting that his appeal will be rendered nugatory, the applicant argues that the respondent will proceed to execute the High Court's orders and irreversibly distribute the estate, thereby rendering his appeal nugatory.
18. The applicant avers that the respondent has already demonstrated an eagerness to expedite the distribution by writing to him to demand surrender of the original title documents immediately after the judgment; and that she has engaged in conduct amounting to intermeddling with the estate, including acts of waste or damage to estate properties, to the detriment of other beneficiaries. The applicant argues that it is in the interest of justice to maintain the status quo over the estate pending his appeal. He cites the case of *Regnoil Kenya Limited v. Winfred Njeri Karanja (supra)* and *Commissioner of Customs v. Anil Doshi* [2007] eKLR) in support of his contentions.
19. While the respondent, acting in person, does not address herself to the twin principles to be considered in a 5(2)(b) application, she does raise certain succinct points that have a bearing on this matter. She notes that the applicant is one of at least eleven beneficiaries of the estate of the deceased, and an administrator, with her and two others, of the estate of the deceased. He is, however, in control of the estate, with two brothers, to the exclusion of the other beneficiaries and, it would appear, the other administrators, hence his prayers for an order of status quo.
20. She notes, further, that while there are other administrators and beneficiaries, he has filed the present application against her, to the exclusion of the other beneficiaries. Finally, she notes that at the core of his dissatisfaction with the decision of Riechi, J is the contention that the learned Judge did not follow the decision of Muchelule, J, who had handled the matter of the estate and rendered a ruling on 7th February 2022.
21. A consideration of the above matters, the circumstances of the parties and the justice of the case leads us to the inevitable conclusion that an exercise of discretion in favour of the applicant is not merited. A determination of the applicant's appeal in his favour on the points he raises in his memorandum of appeal would not be rendered nugatory should the orders he seeks not be granted. Ultimately, as one of the children of the deceased, he is entitled to an equal share of the estate with his siblings, which is what the trial court directed in the impugned judgment. Determination of the question whether Riechi, J's decision should have been influenced by the earlier ruling of Muchelule, J, a court of concurrent jurisdiction, would not be rendered nugatory should the orders sought by the applicant not be granted.
22. In the result, the Notice of Motion dated 27th February 2025 fails, and is hereby dismissed with costs to the respondent.

DATED AND DELIVERED AT NAIROBI THIS 25TH DAY OF MARCH, 2026.

D. K. MUSINGA, (PRESIDENT)

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JUDGE OF APPEAL



MUMBI NGUGI

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JUDGE OF APPEAL

G. V. ODUNGA

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed.

DEPUTY REGISTRAR

