



REPUBLIC OF KENYA



KENYA LAW
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**Chumba v Ombasa & 2 others (Civil Appeal E017 of 2025)
[2026] KEHC 5469 (KLR) (28 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5469 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
CIVIL APPEAL E017 OF 2025
CM KARIUKI, J
APRIL 28, 2026**

BETWEEN

LAURA CHUMBA APPELLANT

AND

BREATRICE OMBASA 1ST RESPONDENT

HILDER SEELA 2ND RESPONDENT

CHARLES GILISHO KASURA 3RD RESPONDENT

RULING

A. Introduction

1. This ruling concerns an interlocutory application for stay of execution pending appeal arising from the ruling of the Narok Chief Magistrate’s Court (Succession Cause No. 9 of 2016) delivered on 20th May 2025. The Appellant/Applicant, Laura Chumba, seeks to stay the implementation of the said ruling and all consequential orders on the basis that the intended appeal raises arguable issues, particularly on jurisdiction, and that, unless a stay is granted, the appeal will be rendered nugatory.
2. The application is opposed by the 1st and 2nd Respondents, who contend that the appeal is incompetent for having been filed out of time without leave, and that the Applicant has failed to meet the legal threshold for the grant of a stay of execution.

B. Pleadings

i. Notice of Motion and Supporting Affidavit

3. The Appellant/Applicant, Laura Chumba, moved this Court by way of a Notice of Motion dated 4th October 2025 brought under Order 42 Rule 6, Order 51 Rule 1 of the Civil Procedure Rules, 2010 and Sections 1A, 1B and 3A of the *Civil Procedure Act*, seeking principally an order of stay of execution



of the ruling and consequential orders issued on 20th May 2025 in Narok Chief Magistrate’s Court Succession Cause No. 9 of 2016, pending the hearing and determination of the appeal. The application also sought certification of urgency and interim ex parte relief in the first instance, together with such further orders as the Court may deem fit in the interests of justice.

4. The application is premised on the grounds set out on its face and is supported by the affidavit of the Appellant, sworn on 19th October 2025. The Appellant depones that she is the registered proprietor of land parcel number Cismara/Ilmasharian/Morijo/3510 and that the trial court, in its ruling delivered on 20th May 2025, improperly assumed jurisdiction and determined a dispute relating to ownership of the said property in contravention of the Law of Succession Act. She avers that the impugned ruling has the effect of depriving her of her proprietary rights and exposing her to the imminent risk of dispossession.
5. It is further deponed that the matter in the subordinate court is scheduled for a hearing of summons for distribution on 21st October 2025. Unless the orders sought are granted, the Appellant risks being disinherited notwithstanding the pendency of the appeal. The Appellant contends that she is dissatisfied with the impugned ruling and has already preferred an appeal before this Court. She expresses apprehension that the Respondents may proceed to execute the impugned orders, thereby rendering the appeal nugatory and a mere academic exercise.
6. The Appellant maintains that the threat of execution is real and imminent and that it is in the interests of justice that a stay of execution be granted pending the hearing and determination of the appeal. She reiterates that the application has been made in good faith and without unreasonable delay, and urges the Court to preserve the subject matter of the appeal.

ii. Replying Affidavit

7. The 1st Respondent, Beatrice Ombasa, swore a replying affidavit on 3rd November 2025 in opposition to the Appellant’s Notice of Motion, on her own behalf and that of the 2nd Respondent. She depones that she has read and understood both the application and the supporting affidavit, and proceeds to controvert them.
8. The Respondent challenges the Appellant’s claim to ownership of land parcel Cismara/Ilmasharian/Morijo/3510, averring that the registration in the Appellant’s name was irregularly effected on 17th January 2014, after the death of the deceased and in the absence of a confirmed grant of representation. She contends that such registration amounts to unlawful intermeddling with the estate contrary to Section 45(1) of the Law of Succession Act, and maintains that the Appellant’s title is therefore invalid.
9. It is further deponed that the trial court acted within its jurisdiction and mandate under the Law of Succession Act and the Magistrates’ Courts Act in issuing the impugned ruling. According to the Respondent, the orders complained of were intended to preserve the estate and safeguard beneficiaries’ interests by restoring the property to the deceased’s name. They did not amount to unlawful deprivation of the Appellant’s property.
10. The Respondent disputes the Appellant’s assertion of imminent dispossession, stating that the execution of the impugned orders has already been lawfully undertaken and the suit property reverted to the deceased’s name. She avers that there is no ongoing or imminent threat to the Appellant’s possession and that events have overtaken the application. She further contends that the scheduled hearing of the summons for confirmation of the grant was properly fixed, with the Appellant duly notified and allowed to participate, rendering the claim of disinheritance speculative.



11. The Respondent maintains that the appeal does not render the trial court's actions unlawful and that the substratum of the estate remains preserved pending lawful distribution. She further asserts that the Appellant has failed to demonstrate that the appeal would be rendered nugatory, as she retains the right to participate in the succession proceedings as a beneficiary.
12. Additionally, the Respondent impugns the credibility of the supporting affidavit, terming it misleading and materially defective for failure to disclose material facts. She reiterates that the Appellant's title is impeachable, having been procured contrary to succession law, and that the trial court properly exercised its inherent jurisdiction to prevent fraudulent dealings with estate property.
13. Crucially, the Respondent raises a procedural objection to the competence of the appeal, deponing that the impugned ruling was delivered on 20th May 2025. In contrast, the appeal and the present application were filed on 4th October 2025, well outside the statutory period prescribed under Section 79G of the *Civil Procedure Act*. She avers that the Appellant neither sought nor obtained leave to file the appeal out of time, rendering both the appeal and the application fatally defective and incapable of invoking this Court's jurisdiction.
14. In conclusion, the Respondent asserts that the application is misconceived, devoid of merit, and an abuse of the court process intended to frustrate the administration of the estate, and urges the Court to dismiss it with costs.

C. Submissions

i. Appellant's/Applicant's Submissions

15. The Appellant/Applicant filed written submissions dated 21st January 2026 in support of the Notice of Motion dated 4th October 2025 seeking an order of stay of execution of the ruling delivered on 20th May 2025 in Narok CM Succession Cause No. 9 of 2016 pending the hearing and determination of the appeal.
16. Counsel for the Appellant identifies three issues for determination, namely: whether the appeal is arguable; whether the Appellant has satisfied the conditions for the grant of a stay under Order 42 Rule 6 of the Civil Procedure Rules; and who should bear the costs of the application.
17. On whether the appeal is arguable, it is submitted that the appeal raises bona fide and weighty issues, particularly on the question of jurisdiction of the succession court. The Appellant contends that the trial magistrate erred in law by assuming jurisdiction to determine a dispute relating to ownership of land, contrary to Section 48 of the *Law of Succession Act*. It is argued that probate courts are limited to the distribution of a deceased's estate and lack jurisdiction to adjudicate contested ownership claims between the estate and third parties. Reliance is placed on *Ahmed Musa Ismael v Kumba Ole Ntamorua & 4 Others*, Civil Application No. 256 of 2013 [2014], where the Court held that an arguable appeal need only to raise a single bona fide issue deserving consideration.
18. The Appellant further submits that the dispute over ownership of land parcel Cismara/Ilmashariani/Morijo/3510 ought to have been referred to the Environment and Land Court established under Article 162(2) of *the Constitution*, as read together with the *Environment and Land Court Act*, the *Land Registration Act*, and the *Land Act*. It is argued that succession proceedings are not the proper forum for the determination of contested proprietary rights, and reliance is placed on *In re Estate of Kimoni Kimithia* [2008] eKLR, where the Court held that succession proceedings are not suitable for resolving disputes over ownership of property as between the estate and third parties. The Appellant also invokes the locus classicus case of *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya)*



Ltd [1989] for the proposition that jurisdiction is everything and a court acting without it renders a null decision.

19. On the second issue, the Appellant submits that she has met the threshold for the grant of a stay under Order 42 Rule 6(2) of the Civil Procedure Rules. On substantial loss, it is contended that unless a stay is granted, the succession court will proceed to distribute the suit property as part of the deceased's estate, thereby resulting in the unlawful cancellation of the Appellant's title and permanent deprivation of her property. The Appellant argues that this would render the appeal nugatory. In support, reliance is placed on *Sewankambo Dickson v Ziwa Abby*, HCT-00-CC MA 0178 of 2005, and *Tropical Commodities Suppliers Ltd & Others v International Credit Bank Ltd (in liquidation)* [2004] 2 EA 331, where substantial loss was described as a qualitative concept referring to real and irreparable loss. Further reliance is placed on *Shell Ltd v Kibiru & Another* [1986] KLR 410 and *James Wangalwa & Another v Agnes Naliaka Cheseto* [2012] eKLR, emphasising that substantial loss is the cornerstone of the jurisdiction to grant a stay.
20. The Appellant also submits that the application was filed without unreasonable delay and that the appeal was lodged promptly after the impugned ruling. On the requirement for security, it is argued that the Court retains discretion depending on the circumstances of the case. Reliance is placed on *Vishram Ravji Halai v Thornton & Turpin* [1990] KLR 365 and *Butt v Rent Restriction Tribunal* [1979] eKLR, which set out the principles governing the grant of a stay, including the need to balance the parties' rights and ensure that an appeal is not rendered nugatory. The Appellant further cites *RWW v EKW* [2019] eKLR for the proposition that the Court may, in appropriate circumstances, dispense with the requirement for security.
21. Counsel reiterates that the purpose of the stay is to preserve the subject matter of the appeal and to safeguard the Appellant's right of appeal, and urges the Court to exercise its discretion in favour of granting the orders sought.
22. In conclusion, the Appellant submits that she has demonstrated an arguable appeal, established the likelihood of substantial loss, and satisfied all the conditions for the grant of a stay. The Court is therefore urged to allow the application as prayed, with costs following the event.

ii. The 1st and 2nd Respondent's Submissions

23. The 1st and 2nd Respondents filed written submissions opposing the Appellant's Notice of Motion for stay of execution, contending that the application is incompetent, unmeritorious, and an abuse of the court process.
24. Counsel submits that the application is fundamentally defective as it is anchored on an appeal that was filed out of time. It is argued that the impugned ruling was delivered on 20th May 2025, whereas the Memorandum of Appeal was filed on 4th October 2025, a delay of approximately 137 days. The Respondents emphasise that no leave was sought or obtained to file the appeal out of time as required under Section 79G of the *Civil Procedure Act*, thereby rendering the appeal—and by extension the application for stay—fatally incompetent. Reliance is placed on *Okumu v Okoth* [2024] KEELC 3397 (KLR), where the Court held that an appeal filed out of time without leave is incompetent and cannot be entertained.
25. On the merits of the application for stay, the Respondents submit that the Appellant has failed to satisfy the mandatory conditions set out under Order 42 Rule 6(2) of the Civil Procedure Rules. It is argued that the requirements for grant of stay—proof of substantial loss, filing without unreasonable delay, and provision of security—are conjunctive and must all be met, failing which the application must fail.



26. On the issue of delay, the Respondents contend that the application was brought after an inordinate and unexplained delay. They argue that if there had been any real or imminent threat of loss, the Appellant would have acted promptly upon delivery of the ruling. Instead, the application was filed several months later, undermining the claim of urgency and demonstrating a lack of diligence.
27. Regarding substantial loss, the Respondents submit that the Appellant has not demonstrated any real, imminent, or irreparable harm. It is contended that the estate remains preserved, the suit property has reverted to the name of the deceased, and the Appellant has neither been dispossessed nor excluded from participating in the succession proceedings. The alleged loss is therefore speculative and insufficient to warrant a stay. In support, reliance is placed on *Kenya Shell Ltd v Benjamin Karuga Kibiru & Another* [1986] KLR 410, where the Court of Appeal underscored that substantial loss is the cornerstone for granting a stay and must be specifically demonstrated.
28. On the requirement for security, the Respondents submit that the Appellant has failed to offer or even address the issue of security for due performance of the decree, which further underscores the inadequacy of the application.
29. The Respondents further argue that the application is a tactical attempt to delay the lawful administration and distribution of the estate rather than a genuine effort to preserve rights pending appeal. They contend that the trial court acted within its mandate to preserve estate property and that the Appellant's claim is merely an attempt to shield an allegedly irregular title from scrutiny.
30. In conclusion, the Respondents submit that the application fails to meet the legal threshold for the grant of a stay, is predicated on an incompetent appeal, and constitutes an abuse of the court process. They urge the Court to dismiss the Notice of Motion dated 4th October 2025 with costs.

D. Issues for Determination

31. Having considered the pleadings and rival submissions, the following issues arise for determination:
 - i. Whether the appeal is competent, having regard to Section 79G of the *Civil Procedure Act*;
 - ii. Whether the appeal is properly before this Court, having arisen from a succession cause but filed as a civil appeal
 - iii. Whether the Appellant/Applicant has satisfied the conditions for the grant of a stay of execution pending appeal under Order 42 Rule 6 of the Civil Procedure Rules;
 - iv. What orders ought to be made as to costs.

E. Analysis and Determination

i. Whether the appeal is competent

32. The starting point is the issue of the competence of the appeal, as it goes to the jurisdiction of this Court. The impugned ruling was delivered on 20th May 2025, while the Memorandum of Appeal was filed on 4th October 2025. This translates to a delay of approximately four and a half months.
33. Section 79G of the *Civil Procedure Act* provides that every appeal from a subordinate court to the High Court shall be filed within thirty (30) days from the date of the decree or order appealed against, excluding the time certified as necessary for preparation of the decree or order. The proviso allows admission of an appeal out of time only where sufficient cause is shown.



34. In the present case, there is no evidence that the Appellant sought or obtained leave to file the appeal out of time. There is equally no explanation tendered for the delay.
35. The law on this point is settled. In *Okumu v Okoth* [2024] KEELC 3397 (KLR), the Court held that an appeal filed out of time without leave is incompetent and cannot be entertained. Similarly, in *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd* [1989] KLR 1, the Court of Appeal famously held that:

“Jurisdiction is everything. Without it, a court has no power to make one more step.”
36. The logical consequence is that where an appeal is filed outside the statutory timelines without leave, the appellate court’s jurisdiction is not properly invoked. The appeal is a nullity ab initio.
37. In the circumstances, I find that the appeal herein is incompetent for having been filed out of time without leave of the Court.

ii. Whether the appeal is competent in light of the nature of the proceedings appealed from

38. It is not in dispute that the impugned decision arose from Narok Chief Magistrate’s Court Succession Cause No. 9 of 2016, a matter governed by the *Law of Succession Act* and the Probate and Administration Rules. However, the Appellant has lodged the present matter as a civil appeal under the Civil Procedure framework.
39. This distinction is not merely cosmetic. Succession proceedings are sui generis and are governed by a distinct statutory regime. The applicable procedural law is the *Law of Succession Act* (Cap 160) and the Probate and Administration Rules, and not the *Civil Procedure Act* and Rules, save where expressly imported.
40. The Court of Appeal in *Trouistik Union International & Another v Jane Mbeyu & Another* [1993] eKLR emphasised that succession proceedings are special proceedings governed by their own code. Similarly, in *In re Estate of G.K.K (Deceased)* [2017] eKLR, the Court held that parties must strictly comply with the procedural framework under the *Law of Succession Act*.
41. While appeals from subordinate courts in succession matters lie to the High Court, such appeals must be properly anchored within the succession jurisdiction and not improperly clothed as ordinary civil appeals. Mischaracterisation of proceedings may lead to procedural confusion and, in appropriate cases, render the proceedings incompetent.
42. That said, the Court is also guided by the principle that procedural technicalities should not defeat substantive justice, as enshrined under Article 159(2)(d) of *the Constitution*. However, that principle cannot be invoked to cure fundamental defects that go to jurisdiction or competence.
43. In the present case, the misdesignation of the appeal as a civil appeal, when it clearly arises from a succession cause, further compounds the procedural defects already identified—namely, that the appeal was filed out of time without leave.
44. Consequently, I find that the manner in which the appeal has been instituted is irregular and reinforces the conclusion that the appeal is incompetent.



iii. Whether the Applicant has satisfied the conditions for stay of execution

45. Notwithstanding the finding above, I will briefly consider whether the Applicant has met the threshold under Order 42 Rule 6(2) of the Civil Procedure Rules. The provision requires an applicant to demonstrate:
- i. Substantial loss;
 - ii. That the application was made without unreasonable delay;
 - iii. Provision of security for the due performance of the decree.
46. These conditions are conjunctive, as held in *Vishram Ravji Halai v Thornton & Turpin* [1990] KLR 365, and must all be satisfied.

i. On substantial loss

47. Substantial loss is the cornerstone of the jurisdiction to grant a stay. In *Kenya Shell Ltd v Benjamin Karuga Kibiru & Another* [1986] KLR 410, the Court of Appeal held that:
- “Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.”
48. The Applicant contends that she risks losing her property if the estate is distributed. However, the Respondents have demonstrated that the property has already reverted to the deceased's name and remains part of the estate pending distribution.
49. The Applicant has not demonstrated any real, imminent, or irreparable loss beyond speculative assertions. As was held in *James Wangalwa & Another v Agnes Naliaka Cheseto* [2012] eKLR, execution per se does not amount to substantial loss unless it creates a state of affairs that irreparably affects the applicant.
50. I am not persuaded that a substantial loss has been established.

ii. On delay

51. The application was filed on 4th October 2025, more than four months after the impugned ruling. No explanation has been offered for this delay.
52. In *Butt v Rent Restriction Tribunal* [1979] eKLR, the Court emphasized that an application for stay must be made without unreasonable delay.
53. The delay herein is inordinate and unexplained, and it militates against the exercise of discretion in favour of the Applicant.

iii. On security

54. The Applicant has not offered any security nor addressed this requirement in any meaningful way.
55. While the Court retains discretion on the nature of security, the requirement itself is mandatory. Failure to address it is fatal, as reiterated in *Vishram Ravji Halai v Thornton & Turpin* [1990] KLR 365.
56. Consequently, the Applicant has failed to satisfy all three conditions required for the grant of a stay.



F. Conclusion and Orders

57. The upshot is that the application before this Court is fundamentally defective. It is anchored on an incompetent appeal filed out of time without leave, and even on its merits, it fails to meet the threshold for the grant of a stay of execution.
58. The Court cannot exercise its discretion in favour of an applicant who has not complied with mandatory statutory provisions. Litigation must come to an end, and the Court must guard against abuse of its process.
- i. In the result, the Notice of Motion dated 4th October 2025 is hereby dismissed with costs to the Respondents.
59. It is so ordered.

DATED, SIGNED, AND DELIVERED AT NAROK, THIS 28TH DAY OF APRIL, 2026

CHARLES KARIUKI

JUDGE

