



**In re Estate of George Aboge (Deceased) (Succession Cause 2032 of 2011)
[2026] KEHC 6103 (KLR) (Family) (29 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 6103 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 2032 OF 2011
CJ KENDAGOR, J
APRIL 29, 2026
IN THE MATTER OF THE ESTATE OF GEORGE ABOGE (DECEASED)**

BETWEEN

**MAURICE OURU OTHIWWO ALIAS OWAK OTHIWO 1ST APPLICANT
JOHN ODIYO ADERO 2ND APPLICANT**

AND

**PHELGONA AKINYI OKWACH 1ST RESPONDENT
ANNA ASUMA OKWACH 2ND RESPONDENT**

RULING

1. This Ruling is on the application dated 20th December, 2025. The application seeks the following orders;
 - i. Spent
 - ii. That pending the hearing and determination of this application interpartes, this honourable court be pleased to issue a stay of execution of the ruling of Hon Justice C Kendagor, delivered on 8th July 2025;
 - iii. That pending the hearing and determination of the intended appeal, there be a stay of execution of the ruling of Hon Justice C Kendagor, delivered on 8th July 2025;
 - iv. Costs be in the cause.



2. The application was served and subsequently heard ex parte, as no response was received from the opposing party. Notwithstanding the absence of a response, it is incumbent upon the Court to examine the application and render a determination accordingly.
3. In the ruling dated 8th July, 2025 the Court dismissed an application seeking revocation of the Grant in this probate matter and reopening of the matter to take the testimony of the lands registrar.
4. This determination was on the grounds that there was already a determination on the land parcel in dispute, East Kisumu/Dago/250, by the Environment and Land Court (ELC) in Kisumu, ELC Case No. 522 of 2015 vide a Judgment delivered on 7th October, 2022. The said judgment is in favour of the Respondents and against the Applicants.
5. The orders issued by the ELC Court in that judgment directed that the Applicants vacate the subject property within a period of 90 days and that, in default, they would face eviction, and the structures present on the property would be subject to demolition. Additionally, the ELC Court granted a permanent injunction against the Applicants, prohibiting their further actions regarding the property after the execution of the eviction order.
6. In the ruling dated 8th July, 2025 this Court firmly concluded that the Applicant was trying to re-characterize the issues in dispute in order to relitigate them in the probate Court. If this Court issues a stay order, it would amount to suspending the enforcement of the decree issued by the ELC Court.
7. I also take cognizance of the fact that the present application for stay was filed in December, long after the ruling delivered in July, 2025. The delay is unexplained and undermines the urgency now asserted.
8. Further, while the stay sought is pending appeal, the Court has not been furnished with evidence of the filed memorandum of appeal or the record of appeal as required by Rule 84 of the Court of Appeal Rules. When the application came up for hearing on 4th March, 2026, the Applicants' counsel only stated that the Notice of Appeal had been lodged with the Court of Appeal. By this time, about eight months had passed since the date of the Notice of Appeal of 8th July, 2025. Rule 84 provides that an appeal shall be instituted by lodging the memorandum of appeal and the record of appeal within sixty days of the date on which the notice of appeal was lodged.
9. The inference to be drawn is that no appeal is presently pending. Consequently, I am not convinced that the Applicants have a bona fide intention to pursue an appeal, as no memorandum of appeal has been filed to date.
10. In consideration of the findings presented in the earlier paragraphs, I conclude that the application dated 18th December, 2025 lacks merit and is therefore dismissed. I make no order as to costs.
11. Orders accordingly.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 29TH DAY OF APRIL, 2026.

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C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl

Ms Awuor Advocate holding brief for Mr Sala, Advocate for the Applicants



No attendance for the Respondent

