



Vicky (Suing as the Legal Representative and Administrator of the Estate of Mathew Kipruto Murgor) & 2 others v Ronoh & 3 others; Murgor & 6 others (Interested Parties) (Civil Application E030, E031 & E035 of 2024 (Consolidated)) [2025] KECA 703 (KLR) (25 April 2025) (Ruling)

Neutral citation: [2025] KECA 703 (KLR)

REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT ELDORET
CIVIL APPLICATION E030, E031 & E035 OF 2024 (CONSOLIDATED)
JM MATIVO, PM GACHOKA & GV ODUNGA, JJA
APRIL 25, 2025

BETWEEN

MAIYO DOMTILA VICKY (SUING AS THE LEGAL REPRESENTATIVE AND ADMINISTRATOR OF THE ESTATE OF MATHEW KIPRUTO MURGOR) 1ST APPLICANT
COLLINS KIPKOECH MURGOR 2ND APPLICANT
FLORENCE CHEPKEMOI MURGOR 3RD APPLICANT

AND

ENID CHEPTANUI RONO 1ST RESPONDENT
FRANCIS MURGOR 2ND RESPONDENT
CHEMUTAI MURGOR 3RD RESPONDENT
DR. JAMES MURGOR 4TH RESPONDENT

AS CONSOLIDATED WITH
CIVIL APPLICATION E031 OF 2024

BETWEEN

FRANCIS MURGOR APPLICANT

AND

ENID CHEPTANUI RONO RESPONDENT

AND



**SHEILA CHEPNGETICH MURGOR & 3 OTHERS & 3 OTHERS & 3 OTHERS
& 3 OTHERS & 3 OTHERS & 3 OTHERS INTERESTED PARTY**

**AS CONSOLIDATED WITH
CIVIL APPLICATION E035 OF 2024**

BETWEEN

DR. JAMES MURGOR APPLICANT

AND

ENID CHEPNGETICH MURGOR RESPONDENT

AND

**SHEILA CHEPNGETICH MURGOR & 3 OTHERS & 3 OTHERS & 3 OTHERS
& 3 OTHERS & 3 OTHERS & 3 OTHERS INTERESTED PARTY**

*(Being an application for Stay of Execution of the Ruling and Order of the High Court, Eldoret
(H. Omondi, J. as she then was) dated 12th May 2022 in Succession Cause No. 112 of 2012)*

RULING

1. This ruling determines three consolidated applications, namely, Civil Application No. E30 of 2024, Maiyo Domitila Vicky & 2 Others vs. Enid Cheptanui Ronoh & 3 Others dated 3rd June 2024; Civil Application No. E31 of 2024, Francis Murgor vs. Enid Cheptanui Ronoh & 3 Others dated 14th June 2024; and Civil Application No. E35 of 2024, Dr. James Murgor vs. Enid Cheptanui Ronoh & 3 Others dated 5th June 2024.
2. When the applications came up for virtual hearing before us on 11th March 2025, by consent of the parties, we ordered that the three applications be consolidated and designated Civil Application No. E30 of 2024 as the lead file. The logic behind consolidation of suits is to avoid conflicting decisions, save time and resources by clubbing matters together involving common questions of fact and law (See the High Court decision in Korean United Church of Kenya & 3 Others vs. Sen Ho Sang [2014] eKLR).
3. A brief history of the litigation before the High Court which yielded the three applications is necessary in order to properly contextualize the diametrically opposed arguments presented by the parties in support of their respective positions. Briefly, William Cherop Murgor (deceased) died intestate on 28th September 2006. He left behind 5 widows and a total of 35 beneficiaries whose names are detailed at paragraph 90 of the final judgment of the trial court delivered by Wananda, J. dated 20th December 2024. After the demise of the deceased, Dr. James Murgor (the 4th respondent in the lead file, who is the deceased's eldest son) with the help of Francis Murgor and Chemutai Murgor (the 2nd and 3rd respondents in the lead file), took over the running of the estate. On 4th April 2012, they petitioned for grant of letters of administration intestate for the deceased's estate which was issued to them on 12th March 2015, after which they applied for the confirmation of the grant and listed the estate properties, the beneficiaries and the identification of shares of all the persons beneficiary entitled to the estate.
4. However, before the grant could be confirmed, they were served with a chamber summons dated 5th November 2015 filed by Enid Cheptanui Murgor (the 1st respondent in the lead file) objecting to



- the confirmation of the grant and the proposed mode of distribution. The objector prayed for: (a) a comprehensive financial account for the administration of the estate from the date of appointment of the administrators; (b) an order that Dr. James Murgor provides a comprehensive financial and distribution account of the estate; and, (c) that Dr. James Murgor and Florence C. Murgor be restrained from intermeddling or otherwise managing Eldoret Municipality Block 4/84 pending distribution of the Estate.
5. The application was opposed by Dr. James Murgor and Francis Murgor vide replying affidavit filed on 1st April 2016 and 15th June 2016. During the pendency of the proceedings, vide Chamber summons dated 19th August 2021, some of the deceased's beneficiaries applied for leave to be joined in the proceedings.
 6. After a protracted hearing, by a ruling delivered on 12th May 2022, Omondi, J. (as she then was) dismissed the application seeking leave to be joined as parties to the proceedings. Regarding the chamber summons dated 5th November 2015, the learned judge ordered as follows:
 - a. Pending the final distribution of the Estate of the deceased, the households of Mrs. Soti Murgor, Mrs Rosa Kimoi Murgor, Mrs Anna Kimoi Murgor and Mrs. Philomena Kimoi Murgor each nominate one representative for appointment as administrators in the estate.
 - b. The Respondents be restrained from exercising any powers over the estate of the deceased, pending submissions of names of 4 proposed administrators reflective of separate houses.
 - c. The 1st and 2nd Respondents provide a comprehensive financial account for the administration of the estate from the date of their appointment as administrators, to the present date.
 - d. The 1st and 2nd Respondents pay into court all rental income received from the date of their appointment as administrators, to the present date including cash held in the estate's bank accounts to facilitate distribution to the widows in keeping with their life interest in the estate of the deceased.
 - e. The 3rd Respondent and Florence C. Murgor be restrained from intermeddling or otherwise managing the property of the estate, specifically Plot No. Eldoret Municipality/Block 4/84, pending final distribution of the estate.
 - f. The 3rd Respondent and Florence C. Murgor be ordered to pay into court all rental and other income derived from Plot No. Eldoret Municipality/Block 4/84 including the rent paid by Caltex Oil Kenya Ltd and Total Kenya Ltd for the last 20 years, pending final distribution of the estate.
 - g. James K. Murgor had been in possession of/gifted IRONG/KESSUP/52 - 28HA (70 acres, during the lifetime of the deceased, this parcel shall not form part of the estate to be distributed.
 - h. The following are readily available for partial distribution; Eldoret Municipality Block 4/83 Eldoret Municipality Block 4/84 Iten/Irong 984, 993, 994, 995, 996, 997, 998, 1001, 1002, 1003 and 1005 Iten Township/054LR No. Sergoit/Koiwaptaoi Block 8/10 Plot No. 003 Kapkoi Centre 73 acres of Chepsigot Farm (and all the portions where the beneficiaries obtained title after the demise of the deceased but excluding parcels whose transactions were done during the lifetime, and are supported by records from Advocate Birech's Office.
 7. It is this verdict that provoked the intended appeals and these consolidated applications. The common thread in these applications is that they all seek stay of execution of the above ruling/orders issued 12th



May 2024. In addition, in Civil Application Nos. E031 of 2024 and E035 of 2024, the applicants pray for stay of the proceedings in Eldoret High Court Succession Cause No. 112 of 2011.

8. The applicants in Civil Application E030 of 2024 are Maiyo Domitila Vicky, Collins Kipkoech Murgor and Florence Chepkemoi Murgor while the respondents are Enid Cheptanui Rono, Francis Murgor, Chemutai Murgor and Dr. James Murgor. The application is supported by the affidavit of Florence Murgor, the 3rd applicant. The gist of their grievance is that the trial court erred in: (a) dismissing their application dated 19th August 2021 which sought leave to join the proceedings, and in doing so, the trial court disregarded the provisions of Articles 25, 40 (1), 50 (1), (2) (k) of *the Constitution*; (b) usurping the jurisdiction of the Environment and Land Court by determining a land dispute;
(c) disregarding gifts granted to them by the deceased inter vivos; (d) for treating the application dated 5th November 2015 premised under Section 76 of the *Law of Succession Act* as an objection proceeding. The application is opposed by the 1st respondent's replying affidavit sworn on 13th June 2024 and the replying affidavit sworn on 12th June 2024 by Sheila Chepngetich Murgor, the 1st interested party.
9. The applicant in Civil Application No. E031 of 2024 is Francis Murgor, while the respondent is Enid Cheptanui Murgor. He prays for stay of execution of the orders issued on 22nd May 2022 pending the hearing and determination of his intended appeal against the said ruling. However, we must point out that the ruling dated 22nd May 2022 does not exist. We note that the applicant annexed the ruling dated 12th May 2022 and from the language in the body of the application and the supporting affidavit, it is evident that the applicant seeks to stay the ruling dated 12th May 2022. The application is opposed vide a replying affidavit sworn on 26th February 2025 by Sheila Chepngetich Murgor who averred that the application was rendered moot by the final judgment rendered on 20th December 2024, therefore, it is incompetent.
10. The applicant in Civil Application No. E035 of 2024 is Dr. James Murgor while the respondent is Enid Cheptanui Murgor. The respondent opposed the application vide replying affidavit sworn on 19th July 2024, and Sheila Chepngetich Murgor, (the 1st interested party) also opposed it vide a replying affidavit sworn on 26th February 2025. The key ground urged is that the application was rendered moot by the judgment dated 20th December 2024.
11. Due to the obvious overlaps and duplication in the reasons advanced in support of the applications and in the responses thereto, for the sake of brevity, we shall focus on the arguments made in support of, and in opposition to the applications.
12. On behalf of the applicant in Civil Application No. E030 of 2024, learned counsel for the applicants Mr. Muneme maintained that the applicants' intended appeal is arguable as demonstrated by their draft memorandum of appeal marked MF 7 appearing at pages 228 - 230 of the record. Counsel submitted that by dismissing the application dated 19th August 2021, the learned judge violated the applicants' right to be heard and their right to property in violation of Articles 25, 40 (1), 50 (1), and 50 (2) (k) of *the Constitution* and the principles of natural justice.
13. Regarding the question whether the intended appeal would be rendered nugatory unless the orders sought are granted, Mr. Muneme maintained that if the impugned decision is implemented the applicants will be evicted from their properties which they have had possession since the deceased's lifetime and in the event their appeal succeeds, it will be a pyrrhic victory. To buttress this submission, counsel cited this Court's decision in *NIC Bank Limited & 2 Others vs Mombasa Water Product Limited* [2021] eKLR in support of the proposition that stay averts hardship pending hearing and determination of an appeal.



14. Dr. Chebii, learned counsel for the applicant in support of Civil Application No. E031 of 2024 maintained that the applicant's intended appeal is arguable because the applicant holds the title number for land reference number Uasin Gishu/Kaptagat Scheme/416 processed by the deceased, just like the titles the deceased processed in favour of his brothers and purchasers.
15. On the nugatory aspect, Dr. Chebii submitted that the applicant is in danger of losing his property which is listed as part of the deceased's estate, which is not the case. Counsel contended that the applicant was settled on the said land by the deceased in 1994 and has since substantively developed the land and constructed a home thereon, and he uses the proceeds derived from his farming activities to support his family.
16. Mr. Omusundi, learned counsel for the applicant in Civil Application No. E035 of 2024 argued that prior to his death, the deceased gifted the applicant land parcel number Irong/Kessup/52-28 (70 acres) and Eldoret Municipality Block 4/84 and therefore the properties do not form part of the deceased's estate nor are they available for distribution. Counsel maintained that the learned judge contradicted herself by holding that the applicant was the lawful owner of Irong/Kessup/52-28 (70 Acres) and at the same time holding that Eldoret Municipality Block 4/84 is part of the deceased's estate.
17. As to whether the intended appeal would be rendered nugatory, Mr. Omusundi contended that the failure to grant the prayers sought will cause great prejudice to the applicant since it is highly probable that L.R. No. Municipality Block 4/84 would be transferred, and/or alienated before this Court determines whether or not the said property is part of the deceased's estate or not. In support of the foregoing assertion, counsel cited this Court's decision in Nairobi City Council vs. Tom Ojienda & Associates (Civil Appeal (Application) No. E080 of 2022) [2022] KECA 1326 (KLR).
18. Learned counsel for Enid Cheptanui Ronoh, Mr. Philip Murgor SC and Mr. Ouma submitted that the applicant in the lead file lacks the locus standi to represent the estate of Mathew Kipruto Murgor, and that their intended appeal is not arguable because the applicants were afforded an opportunity to be heard before the trial court, therefore, it cannot be said they were not condemned unheard, and their only motive is to delay the succession proceedings.
19. Counsel maintained that the applicants do not stand to suffer any prejudice because the ruling delivered on 12th May 2022 did not distribute the estate, nor have they lost any property, and it is upon them to prove to the trial court that the deceased gifted them inter vivos, therefore, there is no danger of the said properties being alienated. It was their submission that if the impugned ruling is stayed, then the estate would be left with no administrator except Francis Murgor.
20. It was also their submission that subsequent to the impugned ruling, there has been two subsequent rulings and a final Judgment which was rendered on 20th December 2024. Consequently, the instant applications have been overtaken by events. Further, since the applicants seek to appeal against the ruling delivered on 12th May 2022, staying the said ruling implies that the leave to appeal against the same ruling will also stand stayed.
21. Mr. Aseso Omollo, learned counsel for 1st and 3rd interested parties in Civil Application No. E035 of 2024 associated himself fully with submissions by Mr. Murgor and Mr. Ouma. It was his submission that Civil Application Nos. E031 and E035 of 2024, are incompetent, fatally defective, and that they seek to stay nonexistent orders. Further, the applications were rendered moot by the judgment rendered on 20th December 2024.
22. Regarding Civil Application No. E030 of 2024, Mr. Omollo argued that the 1st applicant lacks the locus standi to prosecute the application because no letters of administration have been issued to the



applicant on behalf of the estate of Matthew Kipruto Murgor, nor has the applicant filed a competent Notice of appeal pursuant to Rule 5 (2) (b) and 77 of the Court of Appeal Rules 2022, because the Notice of Appeal relied on was lodged prior to the grant of leave to appeal which was granted on 24th May 2024.

23. In his rejoinder, Mr. Munene maintained that the trial court made a finding on gift inter vivos without hearing the applicants and therefore that decision needs to be overturned. Mr. Omusundi associated himself with the submissions by Mr. Munene.
24. We have given due consideration to the consolidated applications, the affidavits in support and those in opposition thereto, as well as the parties' submissions and the authorities cited. Our invitation to intervene on behalf of the applicants has been invoked under Rule 5 (2) (b) of the Court of Appeal Rules, 2022. Under the said rule, this Court exercises unfettered discretion, which must be exercised judicially. This Court in *Trust Bank Limited and Ano. vs. Investech Bank Limited and 3 Others* [2000] eKLR delineated the jurisdiction of this Court in such applications as follows:

“The jurisdiction of the Court under Rule 5 (2)

- (b) is original and discretionary and it is trite law that to succeed an applicant has to show firstly that his appeal or intended appeal is arguable, to put another way, it is not frivolous, and, secondly that unless he is granted a stay, the appeal or intended appeal, if successful will be rendered nugatory. These are the guiding principles but these principles must be considered against facts and circumstances of each case...”

25. As mentioned earlier, in two of the applications, the applicants are seeking to stay the proceedings before the trial court. It is important to underscore an applicant seeking to stay proceedings under Rule 5 (2) (b) must also satisfy the two pre-requisites, namely, must demonstrate that the appeal or intended appeal is arguable, and that, in absence of stay, the appeal or intended appeal will be rendered nugatory. The above rule also applies to applications for stay of proceedings. It reads:

“(2) Subject to sub-rule (1), the institution of an appeal shall not operate to suspend any sentence or to stay execution, but the Court may-

- (b) in any civil proceedings where a notice of appeal has been lodged in accordance with rule 77, order a stay of execution, an injunction or a stay of any further proceedings on such terms as the court may think just.”

26. On the first precept, that is, whether or not the applicants' intended appeals are arguable, we have to consider whether there is at least a single bona fide arguable ground that has been raised by the applicants in order to warrant ventilation before this Court. This Court in *Stanley Kang'ethe Kinyanjui vs. Tony Ketter & 5 Others* [2013] eKLR described an arguable appeal as one which must not necessarily succeed, but one which ought to be argued fully before the court, one which is not frivolous.

27. The Supreme Court in *Teachers Service Commission vs. Kenya National Union of Teachers*, [2015] eKLR described the nature and scope of the jurisdiction of this Court under Rule 5 (2) (b) as follows:

“It is clear to us that Rule 5(2) (b) is essentially a tool of preservation. It safeguards the substratum of an appeal, if invoked by an intending appellant, in consonance with principles developed by that Court over the years...Rule 5 (2) (b) of the Court of Appeal Rules, 2010 is derived from Article 164 (3) of *the Constitution*. It illuminates the Court of Appeal's



inherent discretionary jurisdiction to preserve the substratum of an appeal, or an intended appeal.”

28. Regarding the first principle, that is, whether the appeal or intended appeal is arguable, this Court in *Somak Travels Ltd vs. Galdys Aganyo* [2016] eKLR stated:

“It is trite law that the applicant need not show a multiplicity of arguable points. One arguable point is sufficient to satisfy the first principle. In addition, an arguable point is not necessarily one that must succeed on appeal, but one that merits a consideration and determination by this court.”

29. We have considered the applicants’ grounds and arguments in support of their respective applications. We have also considered the grounds cited by the draft memorandum of appeal marked “MF 7” raising 8 grounds of appeal. We are alive to the fact that in determining an application of this nature, we are not required to make definitive findings of fact or law. Such determinations are the preserve of the bench that will hear the intended appeals. Within the confines of our remit in an application of this nature, we note that the applicants inter alia fault the learned judge for: (a) holding that the application dated 5th November 2015 is a valid objection, yet it did not meet the requirements of sections 68 and 69 of the *Law of Succession Act* and Rule 17 of the Probate and Administration Rules 1980; (b) dismissing the chamber summons dated 19th August 2021 which sought leave to join the proceedings, and in doing so, the trial court disregarded the provisions of Articles 25, 40 (1), 50 (1), (2) (k) of *the Constitution*; (c) usurping the jurisdiction of the Environment and Land Court by determining a land dispute; and, (d) disregarding gifts granted to the applicants inter vivos by the deceased. Without delving into the merits of the intended appeals, we are satisfied that the said grounds are not frivolous, bearing in mind that an arguable ground does not necessarily have to succeed. Accordingly, we are satisfied that the applicants have demonstrated that the intended appeals are arguable, therefore, they have satisfied the first threshold.

30. Turning to the second prerequisite, that is, whether the appeal, if successful, would be rendered nugatory in the event we decline to grant the stay sought and the intended appeals succeed, in *Stanley Kang’ethe Kinyanjui vs Tony Ketter & 5 Others* (supra) this Court stated described the term nugatory as follows:

“ix). The term “nugatory” has to be given its full meaning. It does not only mean worthless, futile or invalid. It also means trifling.

x). 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.”

31. This Court in *Reliance Bank Ltd vs. Norlake Investments Ltd* [2002] I EA 227, held that the factors which can render an appeal nugatory are to be considered within the circumstances of each particular case, and in doing so, the Court is bound to consider the conflicting claims of both sides. To surmount the requirement that an appeal will be rendered nugatory, an applicant must demonstrate that the loss suffered if the stay is refused will be irreversible.

32. The applicants in these consolidated applications are apprehensive that the properties which they maintain were gifted to them inter vivos by the deceased have been declared by the trial court to be part of the deceased’s estate, and that, the said properties risk being alienated because the deceased’s estate is on the verge of being distributed. As a result of the said apprehensions, two of the applications seek an order of stay of the proceedings in High Court Eldoret Succession Cause No. 112 of 2011.



33. The question still remains whether the intended appeal will be rendered futile or a mere academic exercise if the order of stay of further proceedings is not granted. In Halsbury's Laws of England, 4th Edition, Vol. 37, pages 330-332, it is stated as follows:
- "The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the Court's general practice is that a stay of proceedings should not be imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue."
34. The applicant's contestation is premised on their claim that the properties were gifted to them inter vivos and they took possession of the properties during the deceased's life time. The applicant in E020 of 2024 claims that he has developed the land, constructed a home and farms on the land. The applicant in E035 of 2024 claims that the title to his land was transferred to him.
35. We ask ourselves what legal ramifications will result if the orders staying the execution and staying the proceedings are not granted. More important, in the final judgment delivered on 20th December 2024, (in respect of which the applicants said nothing about), the trial judge ordered that all the estate properties be valued by a Professional Valuer to be appointed by the Administrators, within a period of 30 days from the date of the Judgment and sold off at the prevailing market rates and upon payment of verified liabilities, the proceeds thereof, be distributed equally amongst all the beneficiaries. It was also ordered that the beneficiaries who claim to have been in possession or occupation of the respective properties, shall be at liberty to, and shall be given first priority to offset the values of such respective properties from the net values of their pro rata respective shares of the estate and should they satisfactorily exercise this option, then, they shall retain their respective properties as owners and the same shall not therefore be sold off in the manner directed by the court. With hindsight of foregoing background, we find that if the intended appeals succeed, then the applicants will be compensated with the value payable for their respective properties, which would be foregone in exchange of them retaining the subject properties. Clearly, the applicants' apprehensions at this point in time are premature and misplaced.
36. We find nothing to suggest that the properties they claim were gifted to them are at the risk of being distributed to other beneficiaries or being transferred or alienated in any manner to their detriment. It has not been demonstrated to our satisfaction that any of the respondents have threatened to take possession of the subject properties. We also find that nothing exceptional has been placed before us to justify an order of stay of proceedings. Therefore, the applicants have not demonstrated that their intended appeals will be rendered nugatory.
37. The succession cause before the High Court has been in Court since 2011 and is currently at perfection of the final Judgment delivered on 20th December 2024. The intended appeals are not against the final judgment, but an earlier ruling. One wonders about the implications of staying execution of a ruling in a case where a final judgment has been pronounced and whether it will amount to staying the final judgment through the back door. In our view, a court of law ought to be slow to unleash such an order for the simple reason that it may delay the implementation of the final judgment or prejudice an appeal that may ensue against the final judgment.
38. In conclusion, it is a requirement that for any relief to issue under Rule 5 (2) (b), both precepts must be satisfied. As held earlier, only one ingredient has been satisfied. These consolidated applications therefore fail on this account and are hereby dismissed. Considering that the litigation giving rise to



these applications involves a succession dispute pitting members of the same family, we direct each party to bear his/her own costs.

DATED AND DELIVERED AT NAKURU THIS 25TH DAY OF APRIL, 2025.

J. MATIVO

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JUDGE OF APPEAL

M. GACHOKA CIArb, FCIArb.

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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.

