



**Kemboi v Marta & another; Ruto (Objector) (Civil Appeal (Application)
E002 of 2025) [2025] KECA 838 (KLR) (16 May 2025) (Ruling)**

Neutral citation: [2025] KECA 838 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT ELDORET
CIVIL APPEAL (APPLICATION) E002 OF 2025
JM MATIVO, PM GACHOKA & GV ODUNGA, JJA
MAY 16, 2025**

BETWEEN

ISAAC K. KEMBOI APPLICANT

AND

ISAAC K. MARTA 1ST RESPONDENT

HENRY K. SANG 2ND RESPONDENT

AND

JAIRUS K. RUTO OBJECTOR

*(Being an application for stay of execution and further proceedings
of the ruling of the High Court of Kenya at Eldoret (R. Nyakundi,
J.) dated 24th December 2024 in P & A Cause No. 311 Of 2013)*

RULING

1. Before us is an application dated 3rd February, 2025 brought by Isaac K. Kemboi, the applicant herein under Rule 5 (2) (b), 49, 55 (2), (b) of the [Court of Appeal Rules, 2022](#) and Sections 1A, 1B, 3, 3A of the [Civil Procedure Act](#). Curiously, the applicant is seeking *ex parte* orders at this inter partes stage. We here below reproduce the prayers sought word by word:

1. Spent
2. That this Honorable court be pleased to grant ex- parte interim order of stay of execution and further proceedings in Eldoret Probate and Administration No. 311 of 2013, in the matter of the estate of the late James Kimarta Ruto (deceased) pending the hearing and determination of this application.



3. That this Honorable court be pleased to grant ex- parte interim order of stay of execution and further proceedings in Eldoret Probate and Administration No. 311 of 2013, in the matter of the estate of the Late James Kimarta Ruto (deceased) pending filing of appeal.
 4. That this Honorable court be pleased to grant ex- parte interim order of stay of execution and further proceedings in Eldoret Probate and Administration No. of 2013, in the matter of the estate of the late James Kimarta Ruto (deceased) pending hearing and determination of appeal upon filing.
 5. That cost of the application be in the cause.
2. We have set out the above prayers verbatim because all of them have a direct bearing on the final outcome of this ruling. In fact, the outcome will be based on them.
 3. The motion is supported by grounds listed on its body, the supporting affidavit sworn by Isaac K. Kemboi on 10th January 2025 together with annexures thereto. It has been opposed by the respondent vide replying affidavit sworn on 4th March 2025 by the 1st respondent.
 4. The instant application was canvassed through rival pleadings, oral and written submissions and legal authorities relied upon by advocates for the respective parties in support of their opposing positions. Ms. Bornes appeared for the applicant while Ms. Chepkirui appeared for the respondents.
 5. It is noteworthy that prayers 2, 3 and 4 as drawn if granted, are meant to remain in force pending the hearing of the application inter-partes. In applications of this nature, the usual approach is to have a prayer for a stay of execution and further proceedings meant to last until this application is determined. One wonders what purpose such prayers will serve if granted.
 6. The problem as we see is here is poor drafting of pleadings.
 Crafting a good pleading calls for precision in drafting, diligence and an understanding of the legal principles which are necessary to formulate a complete cause of action and precision in the prayers sought. Like a guided missile, a prayer sought in a court pleading must be specific and precise. Clearly, the applicant got it wrong right from the start. There is clearly no prayer of stay of execution and stay further Proceedings in Eldoret Probate and Administration No. 311 of 2013 to consider at this inter partes stage. In the circumstances, it would be an idle exercise to contemplate consideration of the merits of the application. Clearly, the orders sought are already spent. No court of law can knowingly grant an order which will serve no utilitarian purpose. Courts of law loath engaging in a futile exercise. This application was dead on arrival. Accordingly, the application dated 3rd February 2025 is dismissed with costs to the respondents.

DATED AND DELIVERED AT NAKURU THIS 16TH DAY OF MAY, 2025.

J. MATIVO

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JUDGE OF APPEAL

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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.

