



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Bwanamkuu v Said & 5 others (Civil Application E058 of 2021)
[2022] KECA 443 (KLR) (18 March 2022) (Ruling)**

Neutral citation: [2022] KECA 443 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT MALINDI
CIVIL APPLICATION E058 OF 2021
SG KAIRU, P NYAMWEYA & JW LESSIT, JJA
MARCH 18, 2022**

BETWEEN

IBRAHIM SAID BWANAMKUU APPLICANT

AND

MAGRIT SAID 1ST RESPONDENT

ZAKIA SHE SHEBWANA 2ND RESPONDENT

ZAHRA SAID MZEE 3RD RESPONDENT

NADIA SAID BWANAMKUU 4TH RESPONDENT

ABU SAID BWANAMKUU 5TH RESPONDENT

MOHAMED BWANAMKUU SHE LALI 6TH RESPONDENT

(An application for stay pending the lodging, hearing and determination of an intended partial appeal from the order of the High Court of Kenya at Malindi (Nyakundi, J.) issued on 22nd March 2021 in Succession Cause No. 119 of 2015 as consolidated with Succession Cause No. 112 of 2016)

RULING

1. In his application dated 30th March 2021, Ibrahim Said Bwanamkuu, the applicant, seeks an order primarily under Rule 5(2)(b) of the *Court of Appeal Rules*, that pending the hearing and determination of his intended appeal from the ruling/order of the High Court given on 22nd March 2021 in Malindi Succession Cause No. 119 of 2015, there be a stay of further proceedings in that matter.
2. The applicant complains that he made two applications before the Judge, one of which sought an injunction to prevent interference with the matrimonial homes, and a second one for declaration that the second respondent's interest in the estate of the deceased was extinguished as she had remarried. He



asserts that the Judge failed, in the impugned ruling, to determine the second application but ordered: that the status quo be maintained; that all beneficiaries of the estate of the deceased continue living in their respective matrimonial homes without interference from each other; that all assets of the deceased estate remain intact without interference from any of the beneficiaries; and that the matter proceeds for hearing from where it has reached.

3. Having considered the application, the supporting affidavit and the submissions of learned counsel, and having regard to the principles applicable in applications of this nature, [see for instance *Stanley Kangethe Kinyanjui vs. Tony Ketter & others* [2013] eKLR], and even as we bear in mind that an arguable appeal is not one which must necessarily succeed, we do not think the intended appeal is frivolous. Counsel for the applicant has, for instance, pointed out that during the hearing of the intended appeal, the Court will be asked to interpret Section 35 of the *Law of Succession Act*.
4. We are however, not persuaded that the intended appeal will be rendered nugatory considering that the High Court ordered the status quo to be maintained pending the hearing and determination of the Succession Cause before that court.
5. Consequently, the application dated 30th March 2021 fails and is hereby dismissed. We make no orders as to costs.

DATED AND DELIVERED AT MOMBASA THIS 18TH DAY OF MARCH 2022.

S. GATEMBU KAIRU, FCIArb

.....

JUDGE OF APPEAL

P. NYAMWEYA

.....

JUDGE OF APPEAL

J. LESIIT

.....

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

