



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**(CORAM: GITHINJI, MWERA & G. B. M. KARIUKI, JJ.A.)**

**CIVIL APPLICATION NO. NAI 29 OF 2014 (UR 22/2014)**

*consolidated with*

**CIVIL APPLICATION NO. NAI 30 OF 2014 (22/2014)**

**BETWEEN**

**KAWAKANJA LIMITED.....APPLICANT**

**AND**

**JANE GATHONI MURAYA KANYOTU..... 1<sup>ST</sup> RESPONDENT**

**MARY WANJIKU KANYOTU..... 2<sup>ND</sup> RESPONDENT**

**MARGARET NYAKINYUA MURIGU..... 3<sup>RD</sup> RESPONDENT**

**CHRISTOPHER NGATA KANYOTU..... 4<sup>TH</sup> RESPONDENT**

**ANDREW PETER NGIRICI..... 5<sup>TH</sup> RESPONDENT**

**JOHN KARIUKI KANYOTU..... 6<sup>TH</sup> RESPONDENT**

**SANDRA GATHONI KANYOTU ..... 7<sup>TH</sup> RESPONDENT**

*(Application for stay of the Orders of Mr. Justice Kimaru, given on 10<sup>th</sup> February 2014 and stay of all proceedings pending the hearing and determination of the applicants intended appeal from the said orders*

*in*

**H.C. SUCCESSION CAUSE NO.1239 OF 2008)**

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**RULING OF THE COURT**

The applicant, Kawakanja Ltd, lodged in this Court on 21.2.2014 two applications numbers 29 of 2014

and 30 of 2014 by way of notices of motion both dated 20.02.2014 seeking against the seven named respondents, four (4) identical orders for stay of the orders made on 10.2.2014 in application No. 29 of 2014 and in application No. 30 of 2014 orders made on 12.2.2014 and in both applications stay of proceedings in Succession Cause No. 1239 of 2008. The prayers in application No.29 of 2014 which were the same as in application No.30 of 2014 (save for the date of the order in application 30 of 2014 which was 12<sup>th</sup> February 2014) were as follows:

1. *THAT this honourable Court be pleased to stay the Order of Mr. Justice L. Kimaru given on 10<sup>th</sup> February 2014 until the hearing and determination of the Applicant's intended appeal from the said orders.*
2. *That this honourable Court be pleased to stay all the proceedings in High Court Succession Case No.1239 of 2008 until the hearing and determination of the Applicant's intended appeal.*
3. *Such further or other relief as this honourable Court may deem fit and just to grant.*
4. *That the costs of and incidental to this application be costs in the intended appeal.*

With the consent of all the counsel for the parties we consolidated the two applications because they relate to the same parties and spring from the same succession proceedings in the High Court Cause No.1239 of 2008.

The applications were supported by the grounds appearing on the face of the notices of motion and by affidavits which we have perused. The applications show that there is pending in the family division of the High Court at Milimani, Nairobi, Succession Cause No.1239 of 2008 involving the estate of James Kanyotu, deceased, who passed away on 13.02.2008 leaving a vast estate which is being contested by his heirs. It is not in dispute that Jane Gathoni Muraya Kanyotu and Mary Wanjiku Kanyotu, the 1<sup>st</sup> and 2<sup>nd</sup> respondents respectively are the widows of James Kanyotu, deceased.

On 12<sup>th</sup> February 2014, orders were recorded by consent in the Succession Cause to the effect, inter alia, that the nuclear family of the late James Kanyotu would meet on 22.2.2014 to discuss and agree on the distribution of the estate of the deceased among the heirs and on 10.2.2014 consent orders were made as follows:

- I. *That in respect of Kamuta Limited, a trial within a trial shall be held within the estate to determine who is entitled to the respective shares of that company. Parties to file and exchange documents within thirty (30) days. Hearing on 28<sup>th</sup> April 2014.*
- II. *That in respect of Westland Residential Resorts, any consent made will be subject to HCCC No.512 of 2010 as well as the orders in Civil Appeal No.65A of 2011 and or any agreement between the parties.*
- III. *That in respect of Dick Githaiga in LR NO. Nairobi/Block 32/965, further discussions to be held – mention on 11<sup>th</sup> February 2014 for further directions.*
- IV. *That in respect of Mr. Nderi, Mention on 3<sup>rd</sup> March 2014 to determine the debt to be paid (HCCC No.453 of 2011 – Commercial Court) to be availed to this court for its perusal.*
- V. *That in respect of the claim by the 3 brothers, the parties to meet and agree on the properties and then frame issues if (disagreement) for determination*
- VI. *That Sandra Gathoni Kanyotu to discuss the issues in the consent and return to court on 11<sup>th</sup> February 2014 for further direction.*
- VII. *That the dividends in African Liaison and Consultant Services Ltd in favour of the deceased and/or Kwanja Ltd to be released to the joint account of the Administrators Advocates, A.M. Wahome & Co. Advocates and Judy Thongori & Co. Advocates forthwith. It shall be held subject to agreement by parties or orders of the Court.*
- VIII. *That mention on 11<sup>th</sup> February 2014 at 8.45 a.m.*

The advocate for Kawakanja Ltd, Mr. M.T. Adala who was on record and who had appeared in the succession proceedings for the applicant company until a little while before the said consent orders were recorded avers in the affidavit sworn by him in support of the applications that he was excluded by the Court (Kimaru, J.) from participating in the succession proceedings ostensibly following disagreement

with the Judge (Kimaru, J.) and consequently was unable to continue representing the interest of Kawakanja Ltd in the cause. It is common ground that Kawakanja Limited was a family company in which the deceased, James Kanyotu, was a director and held all the shares except one while the other directorship was held by Jane Gathoni Muraya Kanyotu, the 1<sup>st</sup> respondent. It is also common ground that dividends amounting to Shs. 283,448,925.80 were declared by African Liaison and Consultant Services Limited in favour of Kawakanja Ltd. As can be discerned from order number (vii) above, the High Court (Kimaru, J.) directed that the dividends be released “*to the joint account of the administrators’ advocates, A. M. Wahome & Co. and Judy Thongori & Co. forthwith to be held subject to agreement by the parties or orders of the Court.*”

The gravamen of the applicant’s grievance is that its advocate, M.T. Adala, was unfairly excluded from the succession proceedings and thus disabled from representing the interest of the applicant whose dividends are now held in a bank account in the names of the advocates for the administrators of the estate of James Kanyotu with the risk of being distributed among the heirs of the estate (of James Kanyotu).

It is averred in the applications that the dividends do not form part of the estate of James Kanyotu, deceased. The applicant contends that it is entitled to be represented by an advocate of its choice in the succession proceedings and having appointed advocate M. T. Adala who has been on record but has now been excluded from the proceedings its rights have been violated and interest put in jeopardy.

Sandra Gathoni Kanyotu, the 7<sup>th</sup> respondent, who is one of the children of the 2<sup>nd</sup> respondent, in her replying affidavit supported the application. She averred that her advocates, Mr. Ibrahim Mwangi, objected in court on 10.2.2014 to the recording of the consent order requiring the dividends due to the applicant from African Liaison & Consultant Services Limited amounting to Shs.283,448,925.80 being released to the joint account of the advocates for the administrators. In particular, she averred that the proceedings in the High Court leading to the impugned orders took place in the absence of Mr. M. T. Adala, the advocate on record for the applicant as he was thrown out of the court by the presiding Judge (Kimaru, J.). As far as she is concerned, there was no consent given by the applicant in respect of the consent orders.

On his part, **Advocate Ibrahim Mwangi**, for the 4<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> respondents swore an affidavit on 10.3.2014 annexing a letter dated 4.10.2010 from the Registrar of Companies confirming that as at that date the directors of the applicant company were Mary Wanjiku Kanyotu, John Kariuki Kanyotu, Sandra Gathoni Kanyotu, Kenneth Peter Njau, and Christopher Ngata Kanyotu. This annexure was prompted by the erroneous annexure attached to the supporting affidavit of Sandra Gathoni Kanyotu marked SGK – 5 relating to Kangaita Coffee Estate Limited instead of Kawakanja Ltd.

In the replying affidavit sworn by the 1<sup>st</sup> respondent, Jane Gathoni Muraya Kanyotu, in opposition to the applications, the latter deposed that she is a director of the applicant company and that the applications had been overtaken by events as the dividends have been released to the joint account of the administrators’ advocates pursuant to the court order and the meetings directed by the Court to be held have taken place or have been overtaken by events and further that the appointment of advocate M. T. Adala has been reversed as have all actions carried out irregularly since the deceased, James Kanyotu, died on 13.2.2008. She questions the seriousness of the applicant to appeal against the orders of 10<sup>th</sup> February 2014.

The applications show that advocate M.T. Adala was appointed by the Board of Directors of Kawakanja Ltd in a Board meeting convened on 10<sup>th</sup> September, 2010 to act for the applicant H.C. Succession Cause No.1239 of 2008 in place of Messrs David Mutunga & Company Advocates. The contention by the 1<sup>st</sup> respondent that Advocate M. T. Adala’s appointment was nullified by the family does not appear to hold water as the family meeting alluded to had no capacity in law to hire or fire counsel for the applicant.

As stated above, in both notices of motion lodged on 21.2.2014 and dated 20.2.2014, the applicant, Kawakanja Ltd, seeks stay of orders of the High Court (Kimaru, J.) given on 10.2.2014 and 12.02.2014

until the hearing and determination of the applicant's intended appeal from the said orders and stay of proceedings in the (High Court) Succession Cause No.1239 of 2008 until the hearing and determination of the applicant's intended appeals. The impugned orders of 12<sup>th</sup> February 2014 were referred to in paragraph 17 of the supporting affidavit of Christopher Ngata Kanyotu on 20.2.2014. They stated that:

***“by consent, the nuclear family of James Kanyotu shall meet on 22.2.2014 at 10.00 a.m. at Pride Inn, Westlands Road, Nairobi to agree the distribution of the free properties of the estate of the deceased.***

***The beneficiaries having titles in respect of any property of the deceased shall surrender them to Court for safekeeping. L.R. No.11261/76 Ruiru until further order of the Court. Mention on 21.2.2014. All beneficiaries to attend.”***

***An inhibition Order is issued in respect of the title of L.R. No.11261/76 Ruiru until further order of the Court. Mention on 27.2.2014. All beneficiaries to attend.”***

While the 7<sup>th</sup> respondent, Sandra Gathoni Kanyotu, supported the application as did the 4<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> respondents, the 2<sup>nd</sup> and 3<sup>rd</sup> respondents were said to oppose the application.

When the applications came up for hearing before us on 10<sup>th</sup> March 2014, learned counsel **Mr. Mwenesi** led Mr. M. T. Adala on behalf of Kawakanja Limited while learned **counsel Mrs. Judy Thongori** appeared for the 1<sup>st</sup> respondent and also held brief for Advocate A. W. Wahome (Mrs) for the 2<sup>nd</sup> and 3<sup>rd</sup> respondents respectively. Learned counsel **Mr. T. W. Ranja** appeared for the 4<sup>th</sup> interested party. There was no appearance by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup> and 6<sup>th</sup> interested parties.

The initial imbroglio in legal representation of the parties when the applications were called out for hearing was resolved when Mrs. Thongori withdrew her notice of change of advocates dated 7.3.2014 through which she had sought to replace Mr. M. T. Adala from the record as the advocate for Kawakanja.

Mr. Mwenesi drew the attention of the Court to the impugned orders made on 10.2.2014 and 12.2.2014 by the High Court (Kimaru, J.) and to the contents of the affidavits filed by or on behalf of the applicant and the respondents. He submitted that Mr. Adala was not allowed to participate in the succession proceedings by Kimaru, J. and hearing proceeded and orders were recorded to which the applicant was not privy. Mr. Mwenesi submitted that Mr. Adala was excluded from the proceedings and called “*a useless lawyer*” by the Judge and that the matter has been referred to the Judicial Service Commission and the Chief Justice. Further, he submitted that what is important for the purpose of the applications is that the consent orders of 10<sup>th</sup> February 2014 on the basis of which dividends belonging to the applicant were released to the joint account of the advocates for the administrators as aforesaid be stayed because they are the property of the applicant. He questioned the legality of the action taken by the Judge in withholding the court file and in making consent orders without participation of a party whose advocate had been stopped from appearing in the proceedings. He wondered whether a consent order can be made without the participation of a party who has been participating in proceedings and whether an advocate can be removed from proceedings and orders adverse to his client made while the court record is made inaccessible to the advocate! It was also his submission that if the proceedings in the High Court proceeded further, the interest of the applicant shall remain unrepresented hence the need to stay the proceedings. Unless stay was granted the appeal would be rendered nugatory in the event that it succeeds, he contended. In any case, he submitted, it would not be in the interest of justice for the proceedings to continue as the Judge had shown ostensible bias against the advocate whose client had suffered non-representation. Mr. Mwenesi also drew the attention of the Court to the draft memorandum of appeal and submitted that there was an arguable appeal. He pointed out that the consent order was not agreed on by all the parties and drew the attention of the Court to the affidavit of the 5<sup>th</sup> respondent in which the latter averred that she did not give her consent and that she protested against the consent orders but the court did not pay heed to her protestations. He also alluded to the issue of bias as an arguable point. More significantly, he contended, the dividends which were made subject of the order of 10.2.2014 were not part of the estate of James Kanyotu, deceased, and that the applicant had a right to own property

and to be protected by law and that the Court had by the impugned orders interfered with the business operations and assets of the applicant company by ordering release of the dividends to which it was entitled. The draft memorandum of appeal by the applicant reflects grounds of appeal including the following:

1. *The learned Judge erred in fact and in law in making a Consent order in the absence of the consent of all the parties in Succession Cause No.1239 of 2008 including that of the Appellant being directly affected.*
2. *The Learned Judge erred in fact and in law by ignoring the objections to the making of the consent order raised by certain of the parties' advocates*
3. *The learned Judge erred in fact and in law as the presiding Judge in Succession Cause No.1239 of 2008 in conducting himself throughout in a manner as if he was an interested party in the cause and exhibiting considerable bias against the appellant.*
4. *The learned Judge erred in fact and in law by ordering that dividends of the appellant be released to the joint account of the administrator's advocates, A. M. Wahome & Co. Advocates and Judy Thongori & Co.*
5. *The learned Judge erred in fact and in law in keeping the file relating to Succession Cause No.1239 of 2008 in his chambers or procuring that the same be not made available to the appellant by the superior court.*
6. *The Learned Judge erred in fact and in law that at the mention on 10<sup>th</sup> February 2014 of Succession Cause No.1239 of 2008 he commanded the appellant's advocate on record never to appear before him again and thereafter ordered the appellant's said advocate to be forcefully removed from the Superior Court.*
7. *That the learned Judge erred in fact and in law by failing/and or refusing to record the entire proceedings in Succession Cause No1239 of 2008 at the mention on 10<sup>th</sup> February 2014.*
8. *The learned Judge erred in fact and in law in failing to appreciate that the interests of justice require that all the affected parties consent to a Consent Order*
9. *The learned Judge failed to appreciate that the Constitution of Kenya and the interests of justice require the appearance or representation of a litigant in court.*

It was Mr. Mwenesi's submission that the applicant had an arguable appeal which, in the event that it succeeds, would be rendered nugatory if the order for stay was not granted.

The applications were supported by the 4<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> respondents whose counsel, **Mr. Nyiha**, adopted the submissions of the applicant's counsel and further submitted that the consent orders amounted to injustice. He drew the attention of the Court to his letter dated 14.2.2014 addressed to the Deputy Registrar of the High Court protesting that his clients had not given their consent to the orders. Moreover, he said, the order directed distribution of property belonging, not to the estate of James Kanyotu, but to Kawakanja Ltd, the applicant. It was Mr. Nyiha's submission that the appeal will be rendered nugatory unless stay is ordered and proceedings in the High Court are stopped for a time.

**Mrs. Thongori**, the learned counsel for the 1<sup>st</sup> respondent opposed the application and relied on the replying affidavit of the 1<sup>st</sup> respondent, Jane Gathoni Muraya Kanyotu, filed on 7.3.2014 in which the latter averred that she is a director of Kawakanja Limited while the deceased James Kanyotu, her late husband, was the other director. The 1<sup>st</sup> respondent averred in her affidavit that the latter held 999 shares in Kawakanja Ltd while the remaining one share was held by Tropical Registrars Limited. She challenged the applicant's seriousness in seeking to appeal against the court orders. She averred that the family of James Kanyotu, deceased, had met on 18.3.2008 and resolved, amongst other things, to appoint as directors of Kawakanja Ltd Messrs Stephen Njao Kanyotu, Christopher Ngata Kanyotu, and Sandra Gathoni who would also be bank signatories. But as the family members were not shareholders in Kawakanja Ltd and thus had no capacity as family members of the deceased to effect any changes in the Board of Directors of the applicant company, the validity of the appointments was said by the applicant's counsel to be questionable.

Mrs. Thongori, expressed her client's concern that the estate of James Kanyotu was not represented

in the Board of Directors of the applicant company and yet the deceased (James Kanyotu) had controlling shareholding. While conceding that notices of appeal were filed against the orders of 10<sup>th</sup> and 12<sup>th</sup> February 2014 Mrs. Thongori submitted that the applications and the orders sought had been overtaken by events because the money had been released and deposited as directed by the Court. She pointed out that the money so deposited was not in any danger. At any rate, she said, the hearing of an application made by Sandra Gathoni Kanyotu in the succession proceedings to have the bank account frozen was in the offing. For these reasons, she contended, the appeal, if successful, would not be rendered nugatory. It was Mrs. Thongori's further submissions that there was no basis for the orders sought and that the order of 12.2.2014 had nothing to do with the applicant and that at any rate the applicant could appoint another advocate to represent it in the High Court in the place of Mr. Adala who was at loggerheads with the Judge (Kimaru, J.). Mrs. Thongori sought dismissal of the applications.

**Mr. Rajah** for the 4<sup>th</sup> interested party opposed the applications and adopting the submissions made by Mrs. Thongori contended that an order for stay of proceedings would paralyze the proceedings in the High Court and adversely affect parties. His client as a purchaser, he submitted, would be unable to remove the existing preservative order so as to enjoy the property purchased by him.

In reply, it was submitted by Mr. Mwenesi that the impugned orders had not been extracted in accordance with the rules and that a conditional stay could be given as the applicant had demonstrated arguability of the appeal and shown that the appeal would be rendered nugatory in the event it succeeded if stay was not granted.

We have duly perused the two applications which we consolidated and heard together as they relate to the same cause in the High Court and involve the same parties. We have also duly perused the affidavits filed in the applications by or on behalf of the parties and considered the rival submissions by counsel on behalf of their respective clients. The issue for our determination is whether the applicant has made out a case under rule 5(2)(b) of the Court of Appeal Rules to entitle it to the orders for the stay of proceedings pending in the High Court and to stay of the orders made on 10.2.2014 and 12.2.2014. The jurisdiction of this Court to entertain applications premised on rule 5(2) (b) arises where an appeal has been filed or where notice of appeal has been given in compliance with rule 75 of the rules of this court. This Court has addressed the issue of its jurisdiction under rule 5(2)(b)(supra) in many cases including **Safaricom Limited versus Ocean View Beach Hotel Ltd & 2 others** (Civil Application Number 327 of 2009) where it stated:

*“It is clear from all the provisions of rule 5 that the basic aim is to provide an interim relief where the Superior Court (High Court) has determined a matter and the party against whom the determination is made has either appealed or intends to appeal ...”*

C. B. Madan JA, as he then was, expounded on rule 5(2) (b) (supra) in **M. M. Butt v. The Rent Restriction Tribunal** (Civil Application No. Nai 6 of 1979) thus:

*“... it has been said that the court as a general rule ought to exercise its best discretion in a way so as not to prevent the appeal, if successful, from being nugatory, per Brett, L. J. in Wilson V. Church (No.2), 12 Ch.D. (1979), 454 at p.459. In the same case, Cotton, L. J., said, at p. 458:*

*“I will state my opinion that when a party is appealing, exercising his undoubted right of appeal, this court ought to see that the appeal, if successful, is not nugatory.”*

*“Megarry J., as he then was, followed Wilson (supra) in Erinford Properties Limited v. Cheshire County Council, (1974) 2 All. E.R. 448 at p.454, and also held that there was no inconsistency in granting such an injunction after dismissing the motion, for the purpose of the order is to prevent the Court of Appeal's decision being rendered nugatory should that court reverse the Judge's decision. The court will grant a stay where special circumstances of the case so require, per Lopes, L. J. in the Attorney General v. Emerson and Others 24 Q.B.D. (1989) 56 at p.59. The special circumstances in this case are that there is a large amount of rent in dispute between the parties, and the appellant has an undoubted right of appeal.”*

In application No.29 of 2014, the applicant lodged on 14.2.2014 a notice of appeal dated 13.2.2014 showing that it was aggrieved by and intends to appeal against the whole of the orders of the High Court (Kimaru, J.) dated 10.2.2014 made in Succession Cause No.1239 of 2008.

In application No.30 of 2014, the applicant lodged on 17.2.2014 the notice of appeal dated 17.2.2014 showing it is intent on appealing against the whole of the order of the High Court (Kimaru, J.) made on 12.02.2014 made in the said Succession Cause.

In light of this, the jurisdiction to entertain the applications has vested. At the outset, let us point out that we discern the interest of the applicant to be with regard to the orders that touch on the dividends amounting to Shs.283,448,925.80 and interest, if any, thereon in addition to any property that may be registered in its name. What does the applicant need to show so as to secure the orders prayed for in the applications? The principles in this regard are a well beaten track. First, an applicant must show that he has an arguable appeal. An arguable appeal is one that is not frivolous but not necessarily one that is bound to succeed. All that an applicant needs demonstrate is that there is an arguable point or points of law. Secondly, an applicant must satisfy the Court that the appeal shall become nugatory in the event that the appeal succeeds unless stay is granted.

In the instant applications, it is not in dispute that the applicant is a limited liability company with legal personality. It is also not in dispute that the sum of Shs.283,448,925.80 is in respect of dividends paid to the applicant by African Liaison & Consultant Services Limited. Nor is it in dispute that the money is now held in Equity Bank at Prestige Centre, Westlands Nairobi in Account No. **[particulars withheld]** in the joint names of A. M. Wahome & Company Advocates and Judy Thongori & Company Advocates pursuant to the consent order dated 10.2.2014 to which, it is said the applicant was not privy. The Court order directs that the money be held *subject to agreement by parties or orders of the High Court*. Mr. Mwenesi expressed on the applicant's behalf the fear that if the money is distributed among the heirs of the estate of James Kanyotu, deceased, and if subsequently the intended appeals are heard and succeed, there is no assurance that the applicant would be able to recover it. For this reason, he said, one does not have far to seek to see that the appeals would, if successful, become nugatory.

As to whether the appeal is arguable, the grounds of appeal and material placed before us clearly show that the appeals are arguable. For starters, the sum of Shs.283,448,925.80 has been shown to be dividends paid to the applicant and therefore is the property of the applicant. It was contended by Mrs. Thongori that James Kanyotu, deceased, owned all the equity in the applicant company except one share and that the applicant is a family company and the money it owns will ultimately go to those who now own the company. That may well be so where the company is wound-up. But in these applications, the applicant company seems to be a going concern. Consequently, money that it owns or to which it is entitled is its property and shareholders, whether controlling or otherwise cannot legitimately lay any claim of right to it. In law the administrators of the estate would be entitled to have transmitted to them the shares held by the deceased in the applicant company and they may, as transferees of such shares be entitled to any dividend that the company may declare, but they are not entitled to dividends declared by other companies in favour of the applicant company. Shareholders in a limited liability company must appreciate that they are members of the company and that the company is, in law, a legal person separate from them as members (see **Solomon v. Solomon & Co. Ltd. [1897] A.C. 22**). In the instant applications, the 1<sup>st</sup> respondent is not a shareholder in the applicant company neither is any of the other parties to the applications. By releasing the money to the estate of James Kanyotu by its order of 10.2.2014, the High Court seems to have infringed on the right of the applicant and deprived it of its property (i.e. money). In doing so, the court relied on a consent order to which the applicant company was not privy and at a time when its advocate, Mr. M. T. Adala, had been excluded from the proceedings and did not consent to the orders on behalf of the applicant which could only speak through its directors or counsel. There are clearly arguable points of law in the intended appeals. Moreover, the exclusion of the applicant's counsel from the proceedings in the High Court, and the manner in which it was done, whether this was justified or not (and we do not wish to pass judgment) clearly lacked decorum. It seems to have resulted in denial of the applicant's right to legal representation in the proceedings. The validity of the order that subsequently ensued and the release of the applicant's dividends to the administrators' advocates as aforesaid further constitute arguable points. It is our finding that the applicant has satisfied

the twin principles of arguability of the appeal and the nugatory effect of the appeal if stay is not granted should the appeals later succeed. In the result, we allow the applications and make the following orders:

1. The proceedings in the Succession Cause No.1239 of 2008 in the High Court at Nairobi are stayed for six months to facilitate hearing and disposal of the appeals.
2. Before the determination of the appeals there shall be no dealings relating to the dividends amounting to Shs.283,448,925.80 and interest, if any, thereon, released by African Liaison and Consultants Ltd to and held in the joint account by the advocates for the administrators of the Estate of James Kanyotu namely A. M. Wahome & Co. Advocates and Judy Thongori & Co. Advocates at Equity Bank Prestige Centre, Westlands, Nairobi in Account No. ***[particulars withheld]*** and it shall not, or any part thereof, be withdrawn or transmitted to any other account or person/s or used as a guarantee or pledge or interfered with in any manner until the applicant's intended appeals are determined or until further orders of this court.
3. The applicant's intended appeals shall be fast-tracked and shall be heard on priority.
4. The costs of these consolidated applications shall abide the outcome of the appeals.

**Dated and delivered at Nairobi this 31<sup>st</sup> day of March 2014.**

**E. N. GITHINJI**

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**JUDGE OF APPEAL**

**J. W. MWERA**

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**JUDGE OF APPEAL**

**G. B. M. KARIUKI**

.....

**JUDGE OF APPEAL**

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

**REGISTRAR**