



In re Estate of Charles Gikuihi Sikamaoi (Deceased) (Succession Cause 226 of 2016) [2025] KEHC 2694 (KLR) (30 January 2025) (Ruling)

Neutral citation: [2025] KEHC 2694 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 226 OF 2016
SM MOHOCHI, J
JANUARY 30, 2025**

IN THE MATTER OF ESTATE OF CHARLES GIKUHI SIKAMOI (DECEASED)

BETWEEN

JOEL KANI SIKAMOI 1ST OBJECTOR

ROSE NJOKI GIKUHI 2ND OBJECTOR

AND

ANASTASIA WAITHERA WACEKE PETITIONER

RULING

1. Before me is a summons filed pursuant to Article 159 (2) (d) of *the Constitution* of Kenya 2010, Order 51 Rule 1 of the Civil Procedure Rules, Rule 73 of the Probate and Administration Rules and Rule 41 of the Court of Appeal Rules where the Applicants seeks the following reliefs;
 - i. That, this application be certified as urgent and service of the same be dispensed with in the first instance.
 - ii. That, this application be heard and stay of execution of the Honourable Court's Judgment/ Decree dated 8th March, 2024 be granted ex-parte in the first instance pending inter-Parties hearing and determination of this Application.
 - iii. That, the Honourable Court be pleased to extend time for seeking leave to Appeal against the Court's judgment dated 8 March, 2024.
 - iv. That, the Honourable Court be pleased to grant leave to Appeal against Court's judgment dated 8th March, 2024.
 - v. That, the Notice of Appeal dated and lodged on 20th March, 2024 herein be deemed as properly filed.



- vi. That, there be stay of execution of the aforesaid judgment/decreed pending the hearing and determination of the intended Appeal in the Court of Appeal entered against this Honourable Court's judgment/decreed dated 8th March, 2024.
 - vii. That, the costs of this application be in the cause.
2. The Application is grounded on the annexed Affidavit of Joel Kani Sikamoi and Rose Njoki Gikuhi and on the following grounds: -
- i. That, the Applicants are the parents of the Deceased herein Charles Gikuhi Sikamol whose Estate is subject of this matter.
 - ii. That, the Applicants herein were the Protesters in respect of this matter.
 - iii. That, in a judgment dated 8th March, 2024 the Applicants protest was dismissed.
 - iv. That, the Protesters in this matter were represented by the firm of M/s. Mongeri & Co. Advocates in this matter.
 - v. That, the Protesters were dissatisfied with the Court's judgment dated 8th March, 2024.
 - vi. That, their Advocates on record Mr. David Mongeri did not seek leave to Appeal against the Court's judgment dated 8th March, 2024.
 - vii. That, an Appeal in a Probate matter from the High Court to the Court of Appeal is with leave of the superior Court (High Court).
 - viii. That, the Protesters did lodge a Notice of Appeal on 20 March, 2024.
 - ix. That, the Protesters were not aware that such a Notice of Appeal needed leave of the Court to be lodged.
 - x. That, the Advocates on record having not sought leave to Appeal it is only appropriate that time for seeking leave be extended and leave to Appeal against the Court's Judgment dated 8th March, 2024 be granted.
 - xi. That, it is also appropriate that upon granting of leave to appeal the Notice of Appeal dated 20 March, 2024 be deemed as properly filed.
 - xii. That, the Respondent is already in the process of implementing the Court's judgment dated 8th March, 2024 and the resultant Certificate of Confirmed Grant issued.
 - xiii. That, it is therefore imperative that there be stay of execution of the Court's judgment dated 20th March, 2024 pending Appeal in the Court of Appeal.
 - xiv. That, if the Court Judgment dated 8th March, 2024 was to be enforced then the applicant's claim to the Estate will be wholly lost.
 - xv. That, if execution of the said judgment dated 8th March, 2024 is not stayed, the intended Appeal will be rendered nugatory and would thereby occasion substantial loss to the Applicants.
 - xvi. That, the Applicants have moved the Court timeously.
 - xvii. That, the properties forming the Estate should be retained as security pending Appeal.



- xviii. That, the Respondent is in the process of enforcing the Court's judgment dated 8th March, 2024 subject of the Appeal which will render the Appeal nugatory.
 - xix. That, in the premises, it is only fair and just that there be stay of execution of the judgment/decree dated 8th March, 2024 pending inter-partes hearing and determination of the instant application and Appeal in the Court of Appeal.
 - xx. That, if execution of the Judgment/Decree dated 8th March, 2024 is not stayed the Applicants shall be occasioned substantial loss and irreparable harm.
 - xxi. That, stay of execution pending Appeal will not occasion the Respondent any real Appeal prejudice as the judgment herein will be secured.
 - xxii. That, the Court is espoused with wide and unfastened discretion to allow the Application herein.
 - xxiii. That, it would only be fair and interest of justice if the orders sought by the instant application
3. The Application was opposed by the Respondent in her Replying Affidavit dated 12th July 2024 where she depones that;
- i. That, I am not aware that the Applicant's lodged a Notice of Appeal on 20th March, 2024 as neither myself nor my advocates were served with the said notice as required by law.
 - ii. That, the application for leave having been lodged on 1 July, 2024, I verily believe that the same has been presented after inordinate delay and that the explanation given for the delay is insufficient to warrant leave been granted as sought.
 - iii. That, it is true that I am in the process of implementing the judgment of the Court dated 8th March, 2024.
 - iv. That, the Applicants have failed to demonstrate the substantial loss they would suffer if no orders of stay are granted.
 - v. That, the Court properly found that the Applicants were not dependants of the deceased at the time of his death hence the Court proceeded to dismiss the protest.
 - vi. That, on the contrary, the deceased daughter and myself continue to suffer due to shortage of resources and it is in the interest of justice that we be allowed to access the only resources left by the deceased currently held by Kenya Revenue Authority.
 - vii. That, there is no explanation from the Applicants why this application for leave and stay of execution was not filed without inordinate delay.
 - viii. That, it is not true that the Applicants have moved timeously for the orders sought herein against the judgment that was delivered on 8th March, 2024.
 - ix. That, it is not fair to require that the properties of the estate to serve as security of the intended appeal after the Court found the Applicants are not dependants of the said estate.
 - x. That, I will suffer loss and prejudice if orders sought herein are granted as I and my daughter depend on the estate for our survival.
 - xi. That, I pray that the application for leave to appeal and stay of execution by the Applicants herein be dismissed as the same has no merit.



- xiii. That, what is deponed to hereinabove is true to the best of my knowledge, information and belief.

Analysis and Determination

4. Having considered the pleadings as filed I am of the view that while the Applicants are entitled to the right to be heard and that this Court is constitutionary duty bound to promote the right.
5. On this limb alone this Court shall grant a 45 days leave to enable the Applicants move to the Court of Appeal.
6. With regard to staying the probate pending the intended appeal, this Court has not been afforded the benefit of the contestation on the impugned judgment to determine arguability of the intended appeal and viability for stay.
7. I however, shall grant a conditional stay of proceedings and execution of judgment for 45 days from today to enable the Applicants to file a substantive appeal together with an application for stay of execution of judgment under rule 5, 2(b).
8. Failure to obtain stay in the Court of Appeal shall pave way for execution.

It is So Ordered.

DATED, SIGNED AND DELIVERED AT NAKURU ON THIS DAY OF 30TH DAY OF JANUARY, 2025.

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S. M. MOHOCHI

JUDGE

6/03/25

Before: S. Mohochi, J – Exparte in chambers

C/A Schola

COURT

This Court notes that it erroneously failed to remit the ruling for typing and as such the period of 45 days leave to appeal shall run from today. It is so ordered.

S. MOHOCHI

JUDGE

