



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Joseph Mwanika Kikulumi alias Joseph Mwanika alias Mwanika Kikulumi (Deceased)  
(Succession Cause 857 of 1998) [2025] KEHC 2524 (KLR) (Family) (25 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2524 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**

**SUCCESSION CAUSE 857 OF 1998**

**EKO OGOLA, J**

**FEBRUARY 25, 2025**

**IN THE MATTER OF THE ESTATE OF JOSEPH MWANIKI KIKULUMI  
ALIAS JOSEPH MWANIKI ALIAS MWANIKI KIKULUMI (DECEASED)**

**BETWEEN**

**PETER NZIOKI MWANIKI ..... APPLICANT**

**AND**

**JOYCE MUMO MWANIKI ..... 1<sup>ST</sup> RESPONDENT**

**ANASTACIA NDULU MWANIKI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The application before this court is dated 6<sup>th</sup> February 2024. The applicant prayed for the following orders:-
  - a. There be a stay of the compliance with and/or the execution of orders contained in the Judgment dated 22<sup>nd</sup> January 2021 pending the hearing and determination of Nairobi Civil Appeal No. 58 of 2022.
  - b. The cost of this application be in the cause.
2. The application was based on the grounds set out therein and the applicant's supporting affidavit. According to the applicant, he was aggrieved with this court's judgment dated 22<sup>nd</sup> January 2022, hence, he filed an Appeal in the Court of Appeal. Despite the Appeal, the respondents are insisting on complying with the impugned judgment.



3. According to the applicant, the deceased estate was distributed more than ten years ago, and no single property is in the name of the deceased. Therefore, redistributing the estate would not be practical and would further result in the violation of the overriding rights of the parties who are not before this court.
4. The applicant further deposed that the parties who purchased the properties from the beneficiaries of the estate did so legally on the strength of the orders issued by this court and the properties are now at the risk of being arbitrarily seized by the same court without them being heard.
5. The applicant deposed that he has an arguable appeal, which would be rendered nugatory if orders sought are not granted. The applicant also averred that he had brought this application without delay. He added that it could not be filed sooner since the respondent had filed an application for contempt of court that had to be determined first.
6. The 1<sup>st</sup> respondent opposed the application vide a Replying Affidavit dated 6<sup>th</sup> April 2024. According to the 1<sup>st</sup> respondent, the application is misconceived, malicious, mala fide, mischievous and ill-advised. The 1<sup>st</sup> respondent deposed that the application's objective is to delay justice and derail the fair conclusion of this matter. She further deposed that the central issue in these proceedings is disfranchising and depriving the respondents, who are the deceased daughters from the second house.
7. The 1<sup>st</sup> respondent deposed that to her knowledge, the applicant has not filed any appeal since she has never filed the Memorandum of Appeal.
8. The 2<sup>nd</sup> respondent opposed the application vide a Replying Affidavit dated 17<sup>th</sup> April 2024. She deposed that the application is devoid of any merit. She contended that the grant issued to the applicant was flawed since it was acquired without the consent of all the beneficiaries. The 2<sup>nd</sup> respondent deposed that the applicant and the rest of the beneficiaries from the first house are hell-bent to disinherit them. She added that this application is one of the delaying tactics used by the applicant to disinherit them.
9. The application was canvassed by way of written submissions.

### **Determination**

10. After careful analysis, the main issue for determination is whether the applicant has met the prerequisite for the grant of stay of execution pending appeal. The principles upon which the court may stay the execution of orders appealed from are well settled. Order 42 Rule 6 of the [\*Civil Procedure Rules\*](#) stipulates:-

“No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but the court appealed from may for sufficient cause order stay of execution of such decree or order and whether the application for such stay shall have been granted or refused by the court appealed from the court to which such appeal is preferred shall be at liberty on application being made to consider such application and to make such order thereon as may to it seem just and any person aggrieved by an order of stay made by the court from whose decision the Appeal is preferred may apply to the appellate court to have such orders set aside.

No order for stay of execution shall be made under sub rule 1 unless:-

- a) The Court is satisfied that substantial loss may result to the 1st Applicant unless the order is made and that the application has been made without unreasonable delay; and



- b) Such security as the Court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the Applicant.

11. Therefore, under Order 42 Rule 6(2) of the Civil Procedure Rules, an Applicant should satisfy the court that: Substantial loss may result to him unless the order is made; that the application has been made without unreasonable delay; and the applicant has given such security as the court orders for the due performance of such decree or order as may ultimately be binding on him.
12. So, will the applicant suffer substantial loss if the orders sought are not granted? The judgment of this court dated 22<sup>nd</sup> January 2021 found that the 1<sup>st</sup> house had disinherited the respondents. The court ordered the applicant and the sons from the 1<sup>st</sup> house to go back to the drawing board and redistribute the deceased estate in accordance with the law. The court further directed the applicant and the beneficiaries of the 1<sup>st</sup> house to report within 30 days on how they had re-distributed the estate. According to the applicant, most properties have been transferred to third parties, and re-distribution will violate their overriding rights to the properties.
13. On 14<sup>th</sup> December 2023, this court ordered the applicant and his co-administrators to produce a full and accurate account of all dealings of the estate. The applicant has also not complied with these orders. It is unclear whether any asset from the estate has been sold. Hence, the applicant's claim that third parties will suffer loss is unfounded. The onus of proving substantial loss rests upon and must be discharged accordingly by the applicant. It is not enough to state that loss is likely to be suffered, but that loss will be suffered.
14. From the foregoing, I dismiss the application dated 6<sup>th</sup> February 2024. The applicant is directed to comply with this court's rulings dated 22<sup>nd</sup> January 2021 and 14<sup>th</sup> December 2023 within 21 days. Failure to which the applicant will be required to show cause why he should not be held in contempt of court. Costs be in the cause.

Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25<sup>TH</sup> DAY OF FEBRUARY 2025**

**E.K. OGOLA**

**JUDGE**

In the presence of:-

Mr. Mutua for the 1<sup>st</sup> Administrator

Ms. Valerie Omari for the 4<sup>th</sup> Respondent

Mr. Muriuki for the 3<sup>rd</sup> Interested Party

Ms. Kyalo for 1<sup>st</sup> Interested Party

Ms Gisiele M court Assistant

