In re Estate of William Cherop Murgor (Deceased) (Succession Cause 112 of 2012) [2025] KEHC 3683 (KLR) (25 March 2025) (Ruling)

Neutral citation: [2025] KEHC 3683 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

SUCCESSION CAUSE 112 OF 2012

JRA WANANDA, J

MARCH 25, 2025

BETWEEN

ELIUD CHEPTANUI MURGOR RONOH ..... OBJECTOR

AND

FRANCIS MURGOR ..... 1ST PETITIONER

CHEMUTAI MURGOR ..... 2ND PETITIONER

AND

SHEILA MURGOR ..... 1ST ADMINISTRATOR

LAWRENCE KIPRUTO MURGOR (NOW REPRESENTED BY JOSEPH KANDIE MURGOR) ..... 2ND ADMINISTRATOR

AND

COLLINS KIPKOECH MURGOR ..... BENEFICIARY

FLORENCE CHEPKEMEI MURGOR ..... BENEFICIARY

DR JAMES MURGOR ..... BENEFICIARY

MATHEW KIPRUTO MURGOR (SUING THROUGH MAIYO DOMITILA VICKY AS LEGAL REPRESENTATIVE/ADMINISTRATOR OF HIS ESTATE) ..... BENEFICIARY

AND

SAMSON E KIBET ..... INTERESTED PARTY

KIPKOSGEI ARAP SANG ..... INTERESTED PARTY

WILLIAM KIPKORIR CHEPKIYENG ..... INTERESTED PARTY

RULING

1. I delivered a Judgment in this matter on 20/12/2024 thus bringing to an end, at least in this Court, a 12 years Court battle over the vast estate of the deceased, William Cherop Murgor. Some of the parties, being dissatisfied with the decision, immediately filed respective Notices of Appeal signifying their intention to renew the battle at the Court of Appeal. Together with the Notices, 3 parties have filed respective Applications seeking orders of stay of execution pending Appeal. The 3 persons who described themselves as "Interested Parties" have also "sprung up" with their own separate Application seeking orders that their names be removed/expunged from the Judgment. With concurrence of the parties, I directed that I would determine all the 4 Application vide this one Ruling.

2. The 1st Application is the one dated 16/01/2022 and filed through Messrs Munene Micheni & Co. Advocates acting for Mathew Kipruto Murgor (through his estate), Collins Kipkoech Murgor and Florence Chepkemoi Murgor. It seeks orders as follows:

   i. ..... [spent]

   ii. ..... [spent]

   iii. Thatthere be a stay of execution against the Judgement, Decree and Orders of this Court delivered on 20th December 2025 by Honourable Justice Wananda J. R. Anuro more specifically a stay against the orders for the valuation and sale of properties title numbers Sergoit/Koiwaptaoi Block 8/6, Uasin Gichu/Kaptagat/417 and Kapkoi Centre Plot No. 003 pending the hearing and determination of the intended Appeal.

   iv. Thatcosts of this Application be in the Cause.

3. The grounds of the Application are as set out on the face thereof and it is supported by the Affidavit sworn by Collins Kipkoech Murgor. In the Affidavit, he has deponed that he is a beneficiary of the estate herein and that he has also been authorized by Maiyo Domtila Vicky (Suing as the Legal Representative and Administrator of the Estate of Matthew Kipruto Murgor), another beneficiary, to swear the Affidavit on their behalf. He then made references to the said Judgment delivered herein on 20/12/2024 and sought to demonstrate the errors committed therein and which, according to him, shows that there is an arguable Appeal. He also made references to the draft Memorandum of Appeal. He then deponed that if the prayers sought are not granted, the Applicants will suffer irreparable and substantial loss as the Administrators of the estate of the deceased have commenced the process of valuing and subsequently selling the Applicants' properties and be further prejudiced in the Cause when the Appeal is ongoing. He gave details of a forwarded phone text message inviting the Administrators for a meeting which, he submitted, duly proceeded and deponed that pursuant thereto, Resolutions were passed and thereafter, the Administrators have engaged valuers and that the Applicants' properties are now ripe for valuation and subsequent selling if the Court does not grant the orders sought. In conclusion, he deponed that the Applicants filed this instant Application expeditiously, the Applicants will abide by any orders of security that may be granted by this Court, the Orders sought will not prejudice the Respondents and the beneficiaries and that it is in the best interest of the principles of natural justice and fairness that this Court do grant the prayers.

4. The 2nd Application is dated 17/01/2022, filed through Messrs Morgan Omusundi Law Firm, the Advocates acting for Dr. James Murgor and seeks orders as follows:

   a. [.....] spent

b. [.....] spent

c. Thatthere be stay of execution of the judgment delivered on the 20th December, 2024 and/or further execution of the decree/order mandating the valuation and sale of the parcels of land known as Eldoret Municipality Plot 4/84 and Sergoit/Koiwoptaoi Block 8/10 together with all the consequential orders thereto pending the hearing and determination of the intended appeal to the Court of Appeal.

d. Thatcosts of the application be in the cause.

5. The Application is supported by the Affidavit sworn by the said Dr. John Murgor who, similarly, deponed that he is a beneficiary of the estate herein, that by said Judgment delivered on 20/12/2024, this Court held that the parcel of land known as Eldoret Municipality Plot 4/84 and Sergoit/ Koiwoptaoi Block 8/10 formed part of the estate and thus subject to equal distribution to the 35 beneficiaries therein, and that the Court ordered that all the properties forming part of the estate be valued by a Professional Valuer to be appointed by the Administrators and sold off at the prevailing market rates and upon payment of verified liabilities, the proceeds thereof, shall be distributed equally amongst all the 35 beneficiaries. He deponed further that the said parcels of land belong to him and he is the bona fide beneficial proprietor having been gifted the same by the deceased before his demise and as such, the same do not form part of the estate of the deceased. He deponed further that he is greatly aggrieved with the Judgment and he instructed his Advocates to prefer an appeal to the Court of Appeal. He deponed further that he has an arguable appeal and he then listed his grounds of appeal. He also urged that since the Court ordered the Administrators to value the properties and sell them off within 30 days from the date of judgment, unless the orders of stay of execution are issued, the Administrators are likely to proceed with execution to his detriment, and which will render his Appeal nugatory. He also urged that the Application has been made promptly, no prejudice will be suffered by the Respondents if the orders are granted as justice must not only be done, but must be seen to be done.

6. The 3rd Application is also dated 16/01/2025 and filed through Messrs Chebii & Co. Advocates acting for Francis Murgor. It seeks orders as follows:

i. [.....] Spent

ii. Thatthe Applicant be granted stay of execution of the Judgment delivered on 20th December 2024 together with the decree and/or orders issued pursuant thereto respectively pending the filing of the Record, hearing and determination of the Appeal.

iii. Any other Relief that this Honourable Court may deem just to grant in the circumstances of this Application.

iv. Thatthe costs of this application be in the appeal.

7. The Application is supported by the Affidavit sworn by the 5th Applicant, Francis Murgor. He deponed that aggrieved with the Ruling of H. Omondi J (as she then was) delivered herein on 12/05/2022, and of the Judgment delivered on 24/12/2024, he filed Notices of Appeal. He deponed that the property Uasin Gishu/Kaptagat Scheme/416 might be surveyed and transferred anytime, that he holds the title deed processed by the deceased and who settled him on the property in 1994, and on which he has carried out substantial developments and built a home. He deponed further that proceeds derived from his farming activities thereon support his family, including educational commitments for his son who is studying abroad, that there is therefore danger of his suffering substantive loss as the property has been listed as part of the estate of the deceased, and that the Appeal has a high chance of success. In the end, he deponed that he stands to be evicted out of the property unless the Court grants stay.

8. The 4th Application is dated 27/01/2025 and is filed through Messrs Miyienda & Co. Advocates acting for the 3 persons described as Interested Parties. It seeks orders as follows:

   i. [.....] Spent

   ii. Thatthe firm of M/s Miyienda & Company be allowed to come on record for the 1st, 2nd and 3rd interested parties.

   iii. Thatthere be an order for review of the Judgment delivered by this Honourable Court on 20/12/2024.

   iv. Thatthere be a declaration that the names of Samson E. Kibet, Kipkosgei Arap Sang and William Kipkorir Chepkiyeng be removed/expunged from the proceedings in this Cause

   v. Costs be provided for.

9. The Application is supported by the Affidavit sworn by the 1st "Interested Party", Samson E. Kibet. He deponed that on 4/11/1983, the 3 "Interested Parties" purchased a parcel of land from the deceased herein measuring 100 acres forming part of L.R. No. 8309/3 which measures 1,270 acres, that he (1st Interested Party) later sold his share in the land to the 2nd and 3rd Interested Parties who each then took up 50 acres and obtained title deeds around 2007.

10. He deponed further that the 2nd "Interested Party" later sold a portion of his 50 acres to a third party necessitating surrender of his original title as the remainder title had to be issued with a new number during partition, and that a new title was issued in 2015. He deponed that it is clear that the "Interested Parties" purchased the 100 acres during the lifetime of the deceased and all the titles were obtained after the deceased facilitated the transfers, that no member of the family of the deceased has raised any issue touching on the land. That the remainder title which was initially L.R. No. 8909/3 is now Sergoit/Koiwoptaoi Block 8 and is obviously less than the 100 acres they bought in 1983 and does not include the Interested Party's land. He deponed further that the Interested Parties were surprised to see their names being mentioned in the Judgment herein delivered on 20/12/2024 and that the Advocates who mentioned their names in the Applications did so without their consent or authority. He referred to paragraph 41 of the Judgment in which they were referred to. He urged that the factual information presented to the Court by the Advocates said to have being acting for them, pertaining to the Sale Agreements alleged was not correct, that they never committed any intermeddling since they bought the land from the deceased during his lifetime. He also referred to paragraph 55 of the Judgment. He therefore reiterated that the names of the Interested Parties ought to be removed from the record of the estate so that when survey is to be done for sale of the estate, their parcels of land be left out. In conclusion, he urged that they have no intention of delaying this Cause, that removing/expunging their names will save a lot in terms of time, money and Court's judicial space as they would not need to go the Environment and Land Court (ELC).

Response to the Applications

11. In opposition to the 1st, 2nd and 3rd Applications hereinabove, the firm of Murgor & Murgor Advocates, acting for Enid Cheptanui Murgor Ronoh, filed more or less identical, but separate Grounds of Opposition dated 28/01/2025, respectively. The grounds were basically that the Ruling that declared the properties Uasin Gishu/Kaptagat Scheme/416, Eldoret Municipality Plot 4/84, Sergoit/Koiwaptaoi 8/10, Sergoit/Koiwaptaoi Block 8/6, Uasin Gishu/Kaptagat/417 and Kapkoi Centre Plot No. 003 as forming part of the estate of the deceased and available for distribution was delivered by the Hon. Lady Justice H. Omondi on 11/05/2022, and not the Judgment dated 20/12/2024, that several applications for stay pending appeal in respect of the declaration that Uasin Gishu/Kaptagat

Scheme/416 forms part of the estate of the deceased have been filed, heard and dismissed by this Court, the instant Application is therefore Res judicata and this Court cannot sit on an appeal of its own orders. It was further urged that a rejection of the prayers for stay pending appeal will not prejudice the Applicants as they have priority as directed by this Court in its Judgment.

12. It was urged further that to grant any form of stay is a serious, grave and fundamental interruption in the right of the beneficiaries of the estate, the deceased died on 28/09/2006, these Succession proceedings were filed in 2012, it has been over 19 years since the death of the deceased, and that finality and expedition in the determination of probate and administration disputes must be promoted. It was also contended that Applicants, together with the family members, including her sisters, the widows and some brothers have been excluded from any benefit whatsoever from the property or estate of the deceased for over 19 years while the Applicant and those aligned to him have had benefit running into hundreds of millions, that several beneficiaries have passed on, several are ailing, and others suffering from cancer and other serious medical conditions. In the end, it was contended that it is therefore only fair that the assets identified for distribution be distributed to the deprived section of the family after taking into account all alleged gifts inter vivos.

13. In respect to the 4th Application, the one filed by the so-called "Interested Parties", the firm of Murgor & Murgor Advocates filed the Grounds of Opposition dated 30/01/2025. It was urged therein that the Applicants are not parties in these proceedings, and have no legitimate interest and or locus in the estate of the deceased, as they are not beneficiaries, dependants, creditors or debtors to the estate, that the Application does not meet the threshold set under Order 45 of the Civil Procedure Rules, or Section 47 of the *Law of Succession Act*, and is only of nuisance value and an abuse of the Court process.

14. On its part, in opposition to the 4 Applications, the firm of ORB Advocates acting for Sheila Murgor filed one composite Grounds of Opposition (unclear when it was filed or its date as it is not traceable in the Judiciary Case Tracking System portal - CTS) addressing all the Applications. It was urged therein that the 1st, 2nd and 3rd Applications for stay of execution are fatally defective and an abuse of the Court process as they do not meet the threshold under Order 42 Rule 6 (b) of the Civil Procedure Rules - no security has been offered by the Applicants, that the Applications by Francis Murgor and James Murgor are factually incorrect and aim at misleading the Court as at paragraph 90 (vii) (c) of the Court's judgment; the two Applicants, amongst others, have been given first priority to "offset the values of such respective properties from the net values of their pro rata respective shares of the estate and should they satisfactorily exercise this option, then in that case, they shall retain the respective properties as owners and the same shall not therefore be sold off". It was therefore contended that there is no immediate danger of the Applicants being evicted as alleged.

15. Regarding the Application by the Interested Parties – it was urged that the same is fatally defective and incapable of being granted as the 3 interested parties participated, and were represented by Counsel (Messrs Munene Micheni & Co. Advocates) in the proceedings before this Court vide their various Applications to be joined and that they are therefore estopped from seeking to be expunged from the proceedings that they themselves sought to join. In the end, it was stated that Sheila Murgor aligns herself with the 3 Grounds of Opposition filed by Murgor & Murgor Advocates on behalf of Enid Cheptanui Murgor Ronoh.

16. In support of the 1st, 2nd and 3rd Applications for stay hereinabove, another beneficiary, Chemutai Murgor through the firm of TripleO Advocates, filed the Replying Affidavit sworn on 31/01/2025. She deponed that she has consistently adopted the position that the wishes of the deceased ought to be respected in terms of distribution of the estate, that gifts which had been issued by the deceased during his lifetime ought to be bequeathed to the beneficiaries of such gifts and that it is logical to permit the question relating to that issue be deliberated before the Court of Appeal and a final decision

be made. She deponed further that permitting the properties to be valued and sold shall expose the Applicants to the risk of losing them as it shall be impossible to reserve a sale once the transactions are concluded. She also deponed that the solution offered by the Court allowing the Applicants to purchase the properties on a priority basis defeats their conviction that the properties are gifts to them, that the Applications have been filed without delay, and that the Applications are limited to specific and identifiable properties and should not therefore affect distribution of other properties. According to her, the Administrators are in the process of executing the Judgment.

Hearing of the Applications

17. With concurrence of the parties, I directed that all the 4 Applications be canvassed by way of written Submissions, and that one Ruling would then be delivered addressing all 4.

18. Mr. Aseso from ORB Advocates (representing Sheila Murgor informed the Court that he will not be filing any Submissions but is opposed to all the Applications. Mr. Njuguna, from TripleO Advocates (representing Chemutai Murgor) similarly stated that he, too, will not be filing any Submissions but was on his part, in support of the Applications for stay of execution. I have also not come across any Submissions filed by Miyienda & Co., the Advocates on record for the Interested Parties.

19. The rest of the parties then filed Submissions as follows:

Advocates	Clients/Parties	Date of Submissions
Munene Micheni & Co.	Mathew Kipruto Murgor, Collins Kipkoech Murgor and Florence Chepkemoi Murgor	9/02/2025
Chebii & Co.,	Francis Murgor	10/02/2024
Morgan Omusundi Law Firm	Dr. James Murgor	11/02/2024
Murgor & Murgor	Enid Murgor	24/02/2024

Submissions by Messrs Munene Micheni & Co.

20. Counsel gave a background and chronology of the events of this litigation, and after submitting on what he deemed to be grounds confirming the arguability of the intended Appeal and pointing out areas of the Judgment where, according to him, the Court erred, submitted that if stay is not granted, the Applicants will be exposed to loss of properties with sentimental value that have been in their possession before the deceased passed away. He urged further that if stay is not granted, money from the sale of the properties will not make the Applicants' whole and the Appeal, if successful will be rendered nugatory. On what qualifies as "sentimental value" vis a vis "substantial loss", he cited the case of David Wekesa v Festus Ngovilo [2012] eKLR. He added that for avoidance of doubt, the Applicants are only requesting for stay of execution on the properties, Sergoit/Koiwaptaoi Block 8/6, Uasin Gichu/Kaptagat/417 and Kapkoi Centre Plot No. 003 and submitted that the Respondents will not be prejudiced if stay is granted only on these properties. In conclusion, he prayed that the Court exercises its discretion in ordering security.

Submissions by Messrs Morgan Omusundi Law Firm

21. Counsel submitted that the Applicant is without a doubt the legal proprietor of the parcels of land known as Eldoret Municipality Plot 4/84 and Sergoit/Koiwoptaoi Block 8/10 having been gifted by his late father during his lifetime, that the Applicant has been in occupation and possession of the said parcels of land for many years ever since the deceased was alive and he has made several developments and improvements on the lands at an immeasurable financial and psychological expense. He submitted further that the impugned judgment ordered that the subject parcels of land be valued and sold off and the proceeds divided equally amongst all the beneficiaries of the estate, and that this decree by the Court is being acted upon by the Administrators of the estate and should it continue, the Applicant's parcels of land plus the developments thereon will be sold off which will cause him substantial loss and at the same time render nugatory the intended appeal which is arguable with high chances of success. He cited the case of Butt v Rent Restriction Tribunal (1982) KLR.

22. According to him therefore, it is evident that the Applicant will suffer substantial loss which cannot be compensated by an award of damages if the orders sought are not granted and the Administrators proceed to dispose of the parcels of land. He urged that the Court should exercise its discretion and allow the Application to ensure that the ends of justice are not defeated and that the Applicant's undoubted right to appeal is not infringed and/or subjugated since the same stands to be otherwise rendered nugatory. In regard to the last requirement that there be security for costs provided by the Applicant, he submitted that the Respondents are yet to draw their Bill of Costs for it to be ascertained what amount is to be provided by the Applicant, but be that as it may, the Applicant is a man of means and he is willing to furnish security as may be directed by this Court should it choose to do so. He also cited the case of RWW vs. EKW (2019) eKLR and submitted further that the Applicant has demonstrated sufficient cause to warrant the grant of stay of execution pending appeal.

23. On whether the application is Res Judicata, Counsel disagreed with the Respondents' contention that similar applications for stay pending appeal in respect to the parcels of land Eldoret Municipality Plot 4/84 and Sergoit/Koiwoptaoi Block 8/10 have previously been filed and which supposed Applications have been heard and dismissed by this Court. He cited Section 7 of the *Civil Procedure Act* and also the case of Re Estate of Riungu Nkuuri (Deceased) [2021] eKLR and averred that the Application does not intend to re-litigate issues that have already been adjudicated upon, but rather, seeks to preserve the subject matter of the Appeal. He submitted that admittedly, the Applicant filed an Application seeking for orders of stay pending appeal at the Court of Appeal vide COACAPPL/E035/2024-Dr James Murgor vs Enid Cheptanui Murgor Ronoh and Sheila Chepngetich Murgor and 3 Others against the decision/Ruling by the Hon. Justice H. Omondi but the same has never been fully adjudicated to date. He further argued that for the doctrine of Res judicata to apply, the matters in issue must, among others, have been determined on merits, that in this case, there is no Ruling and/or orders in respect to any Application seeking for stay of execution in respect to the parcels of land Eldoret Municipality Plot 4/84 and Sergoit/Koiwoptaoi Block 8/10 and as such, the doctrine of res judicata is not applicable.

Submissions by Messrs Chebii & Co.

24. Counsel for Francis Murgor, after reciting the matters already set out in his client's Supporting Affidavit, submitted that when handling Applications for stay pending Appeal in land matters, which arise in Succession proceedings, as in this case, the land needs to be preserved in a state which a successful Appellant will not find that it no longer exists or its character has been changed.

25. He submitted that critical factors to take into consideration include the nature and user of the land, the length of possession by the Applicant and the issue whether the Applicant can provide security for

the loss of use that will be suffered by the Respondent while the Appeal is pending determination. He cited the case of George Kiprono Kii versus Christopher Kili, Eldoret ELC No. 1001 of 2012. He then submitted that in the circumstances of this case, the Applicant ought to enjoy user of the property Uasin Gishu/Kaptagat/417 pending hearing of the Appeal.

Submissions by Messrs Murgor & Murgor Advocates

26. Counsel basically reiterated the matters stated in his respective Grounds of Opposition, including that the matters raised in the Applications are Res judicata, this Court having already observed so in its earlier Rulings. He submitted further that the Applicants' sole objective in these proceeding, is to obstruct, with no alternative solutions ever forthcoming, that for example; to seek a stay of execution of the Court's entire Judgment to expect that even those assets that the Applicants do not contest cannot be distributed. He urged further that despite being given the first right of refusal against the property they occupy, and despite being aware of the provisions of Section 42 of the *Law of Succession Act*, the Applicants cannot fathom that their siblings similarly have a right to inherit. He posed the question; is this not the purest form of selfishness?

Determination

27. The issues arising for determination in this matter are evidently the following:

    i. Whether an order of stay of execution barring execution of the Judgment delivered herein on 20/12/2024 should be issued pending the hearing and determination of the Applicants' intended appeal.

    ii. Whether there is merit for the Application by the so-called "Interested Parties" to seek an order that their names be expunged from the proceedings.

28. In respect to the considerations to apply when dealing with an Application for stay of execution, in my previous Ruling herein dated 24/05/2024, which, similarly, was in regard to an Application for stay pending Appeal, I made the following observations which I adopt herein:

    26. Regarding the prayer for stay of execution, Rules 49 and 73 of the Probate and Administration Rules, read together, permit the Court to invoke its inherent jurisdiction to issue appropriate orders in order to meet the ends of justice and to prevent abuse of process. I am therefore of the view that the said provisions, read with Section 47 aforesaid, are wide enough to cover the prayer for stay of execution of a judgment or decree in Succession proceedings. In any event, it has not been denied that indeed this Court has the jurisdiction to grant the order of stay of execution pending appeal.

    27. Having made the above findings, I may mention that stay of execution pending appeal is a discretionary power but, which, needless to state, must not be exercised on whims, but judiciously, on defined principles and on the basis of the facts of the case. It is also the position that the objective of stay of execution is to prevent "substantial loss" from befalling an applicant and thus to prevent the appeal from being rendered nugatory.

    28. It is also trite law that an Applicant for stay of execution of a decree or order pending Appeal is required to satisfy the conditions that the Application has been made without unreasonable delay, that "substantial loss" may result to the Applicant unless the order is granted, and where applicable, that the Applicant is willing or ready to deposit security for due performance of the decree or order."

29. The first condition that I need to consider is therefore whether the Applications have been made without unreasonable delay. In this case, the Judgment was delivered on 20/12/2024. Two of the Applications were then filed on 16/01/2025 and one on 17/01/2025. It cannot therefore be disputed that the Applications were filed timeously and without delay, particularly considering that the Christmas/New Year festive season fell during the intervening period.

30. The second condition is whether the Applicants would suffer "substantial loss" should the orders not be granted. As to what constitutes "substantial loss", F. Gikonyo J in the case of James Wangalwa & Another v Agnes Naliaka Cheseto [2012] eKLR, stated as follows:

> 11. No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, ..., does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process.
>
> The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the Applicant as the successful party in the appeal. This is what substantial loss would entail, a question that was aptly discussed in the case of Silverstein N. Chesoni [2002] 1KLR 867, and also in the case of Mukuma V Abuoga quoted above. The last case, referring to the exercise of discretion by the High Court and the Court of Appeal in the granting stay of execution, ..., emphasized the centrality of substantial loss thus:
>
> "... the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory."
>
> With this observation, of course, a frivolous appeal cannot in practical terms be rendered nugatory. The only admonition however, is that the High Court should not base the exercise of its discretion ..... only on the chances of the success of the appeal. Much more is needed in accordance with the test I have set out above."

31. Further, Platt, Ag. JA (as he then was) in Kenya Shell Limited vs. Kibiru [1986] KLR, expressed himself as follows:

> " ..... If there is no evidence of substantial loss to the applicant, it would be a rare case when an appeal would be rendered nugatory by some other event. Substantial loss in its various forms, is the corner stone of both jurisdictions for granting a stay. That is what has to be prevented. .....".

32. On his part, Gachuhi, Ag. JA (as he then was) in the same case, stated as follows:

> " ..... What sort of loss would this be? In an application of this nature, the applicant should show the damage it would suffer if the order for stay is not granted. By granting a stay would mean that status quo should remain as it were before judgement. What assurance can there be of appeal succeeding? On the other hand, granting the stay would be denying a successful litigant of the fruits of his judgement."

33. On the merits of the Appeal, I did in my said earlier Ruling dated 24/05/2024, when dealing with a prayer for grant of leave to appeal, also held as follows:

> " 25. In this matter, I have perused the respective Memoranda of Appeal presented through the firms of Munene Micheni & Co. and by Morgan Omusundi Law Firm. Although the Application filed through Messrs Chebii & Co does not also contain a draft Memorandum of Appeal, I observe that the major ground of Appeal is that by the said Ruling, the Court dispossessed the Applicants of properties gifted to them inter vivos by the deceased before he died and that the Court reverted the properties to the estate of the deceased. There are also allegations of denial of the right to be heard and also that the Court usurped the jurisdiction of the Environment and Land Court (ELC). Appreciating that the Applicants have a right to appeal and having considered the grounds of appeal put forward, I am satisfied that the intended appeals cannot be termed as frivolous or not raising substantive points of law for consideration by the Court of Appeal. I also do not believe that the Respondents will suffer prejudice that cannot be cured if leave to appeal is granted. Section 47 of the *Law of Succession Act* also empowers this Court to make such orders as may be just and expedient. In the circumstances, I find no reason why the Applicants should be denied the opportunity to pursue the appeal and hereby grant the same.

34. The facts and grounds of Appeal touched on above are, no doubt, closely related to, if not the same, as the present grounds now being urged, as arising from my subsequent Judgment. The above grounds are clearly heavily intertwined with the earlier findings and orders made by my predecessor, H. Omondi J (as she then was) in this same matter vide her Ruling dated 12/05/2022 and which findings, being by a Judge of equal jurisdiction, I therefore basically followed or adopted in my Judgment. The reality is therefore that the grounds that shall be canvassed before the Court of Appeal while challenging the Ruling of H. Omondi J (as she then was) dated 12/05/2022, are likely to also include the same grounds that are now being urged herein. Having therefore already found in my Ruling dated 24/05/2024 that the intended previous Appeal is not one that can be termed as being frivolous or with no chances of success, I uphold the same finding herein.

35. On the issue of "substantial loss", the Respondents have referred to my said earlier Ruling dated 24/05/2024 whereof, as aforesaid, I declined to grant an earlier sought order of stay of execution pending Appeal, and urged that by reason thereof, the issue of stay of execution cannot be re-opened as it is "Res Judicata".

36. In interrogating this argument, this is how I held in the said previous Ruling dated 24/05/2024:

> " 34. However, since delivery of the Ruling, a lot has happened in this case. Various further Applications, including on contempt of Court and on execution of the orders, have been filed and determined and the Court has in the process given further orders which have significantly altered the situation that was prevailing as at 12/05/2022 when the Ruling was delivered. Further, by its Ruling delivered on 15/12/2023 this Court, by implication, varied some of the orders made vide the said Ruling of 12/05/2022. This means that the appeal on some of the issues intended to be challenged may no longer even be viable. In addition, several of the beneficiaries have also in the intervening period, met their unfortunate demise.
>
> In the circumstances, I find that granting stay of execution after all the developments that have taken place in this matter since 12/05/2022 will only confuse the parties, disrupt the momentum already picked up in resolving this matter and unnecessarily delay the resolution of this Cause. In any event, none of the Applicants has demonstrated any serious prejudice

that they would suffer if the stay is not granted. It is 2 years since the Ruling was delivered and if the Applicants have survived the orders to date, what will now so drastically change? Even if the orders were to be enforced or executed, the Applicants have not demonstrated that the same cannot be undone or cured.

In the circumstances, my finding is that no "substantial loss" to be suffered by the Applicants has been demonstrated. Having found as such, consideration of the third condition - deposit of security - does not now arise."

37. From the above, it is clear that the facts and circumstances that formed the basis for the finding of there being no "substantial loss" as at the time of the Ruling dated 12/05/2024 are entirely different and distinct from those that now arise. First, what was sought at that time was an interlocutory stay of execution which, if granted, would have unnecessarily stalled the proceedings and it was the Court's considered view that granting an order of stay at that stage would have unnecessarily delayed the resolution of the long outstanding matter in the High Court. This case having been before the High Court since the year 2012, the Court's view was that, rather than stall the case because of piecemeal Appeals, interest of justice would be better served by allowing the case to be first concluded in its entirety, then subsequently, all the challenges arising could then be placed before the Court of Appeal for determination at once. The situation that the Court desired – resolution of the High Court case – has now been achieved and we are no longer therefore talking of an interlocutory stay. The Court has now finally distributed the estate and all parties now know where they stand, at least at the High Court.

38. In the circumstances, the Respondent's argument that any further Application for stay pending Appeal is now Res Judicata or that by entertaining it, this Court will be sitting on Appeal on its own Judgment, does not attract my concurrence. The circumstances are clearly different.

39. The above finding now therefore "opens the gate" for determination of the question whether the Applicants have demonstrated that they would suffer "substantial loss" and/or that their intended Appeals shall be rendered "nugatory" if the order of stay is not granted.

40. In determining the said issue, I note that the major argument advanced by the Applicants throughout this case is that the subject properties in contention were gifted to them inter vivos by the deceased long before his death in 2006. Needless to state, H. Omondi J (as she then was), by her Ruling dated 12/05/2022, after hearing the parties viva voce, rejected this argument and declared the properties as forming part of the estate. As aforesaid, that decision being one made by a Judge of equal jurisdiction in the same action, and whom I could not therefore overrule, I followed and applied it in my Judgment of 20/12/2024.

41. The Applicants claim that they have been in occupation of the said properties for a long time and have invested heavily thereon. Of course, the Applicants, in exercising their constitutional right to appeal, shall have a second chance to argue out that argument before the Court of Appeal. No one knows how the Court of Appeal will rule. The question is however; what will happen if, after the properties have been sold off to third parties and proceeds thereof distributed among the beneficiaries as directed by this Court, then subsequently, the Court of Appeal overturns the Judgment herein? According to the Applicants, they will suffer "irreparable" loss and damage and will risk losing their investments in the properties. I have not heard the Respondents disputing the possibility of such loss and damage and even if they did, I would still be persuaded that indeed, the Applicants would be disadvantaged and may indeed be exposed to losses.

42. Having handled this matter for sometime now, it is clear that there has been serious hostility and infighting over the estate, and which on many occasions has turned vicious. Because of this, there has been accusations and counter-accusations of mismanagement of the estate and also intermeddling.

There are grievances and credible allegations that a few family members have taken over most of the estate properties and benefited therefrom immensely over the years and have by these acts, excluded other equally entitled beneficiaries. As a result of this chaotic situation, Applications seeking findings of contempt of Court have been presented before this Court but which could not be conclusively determined with finality since the status quo prevailing has always been in dispute and difficult to establish. This has arisen, majorly because, due to the infighting, mistrust and absence of co-operation within the family, the Administrators have to date not been capable of fully taking possession of the scattered properties or to fully administer the estate. Considering the vast nature of the estate, until the delivery of the Judgment, try as it could, the Court had also not been able to put to rest all the matters in dispute. The number of interlocutory Applications and counter-Applications that this Court has had to hear and determine proves this fact. The Judgment has, at least for now, brought about clarity over questions to do with the beneficiaries' shares of the estate, and occupation and possession of the properties. What I am saying is that without the Judgment being in force, the chaotic situation prevailing during the pre-Judgment era may swiftly revert and therein would lie the risk of a relapse of the situation of anarchy so far witnessed. Granting a blanket stay of the Judgment for even one more day is therefore likely to open up the way for parties to exploit the "loophole" or the window that shall be created by grant of such stay. Selfish parties may take steps to undo the stability that the Judgment has sought to bring about.

43. It is true, as argued by the Respondents, that this Court, in its Judgment, directed the Administrators to grant the Applicants the first priority in acquiring the said properties before they can be sold off to any third party. While that is so, exercise of that option is pegged on the Applicants "trading-off" their pro rata share of inheritance from the estate against the value of the properties. Needless to state therefore, exercising that option may not by itself cure the Applicant's losses should the Court of Appeal overturn the Judgment. As justifiably argued by the Respondents, the Applicants may well mitigate any possible losses or damage that may be incurred, by exercising the priority rights given to them by this Court and thereby retain possession of the subject properties. If and when the Court of Appeal determines that the properties had indeed been bequeathed to the Applicants inter vivos before the deceased passed on, then, all they may need to do is to claim back their pro rata share of the estate that they would have forfeited or "traded-off" in exercising the priority rights. However, as already observed, even exercise of this option may not fully address the loss that may be suffered by the Applicants if the Appeal succeeds. I agree that execution of the Judgment before the Appeal is determined, apart from causing painful and destabilizing inconvenience to the Applicants, is also likely to cause loss that may turn out to be eventually "irreparable" should the Appeal succeed.

44. After very carefully weighing the competing rights of the protagonists, taking all relevant factors into account, and carefully balancing their interests against each other, the scales of justice, in my view, tilts in favour of granting the orders of stay of execution, but only in respect to the specific properties in contention.

45. I now remain with the little matter of the Application by the so-called "Interested Parties" seeking that their names be removed/expunged from the proceedings by way of review. In determining that Application, I reiterate that I did not come across any Submissions filed on their behalf. I therefore only have the Supporting Affidavit to consider.

46. In my said Judgment dated 20/12/2024, I also dismissed two respective earlier Applications filed by 3 intended "Interested Parties" who had, after the very late stage of close of the trial, applied to be joined into this matter as creditors/liabilities pursuant to their claims of having allegedly purchased some parcels of land from the deceased. I notice that out of those 3, the current 1st and 2nd 'Interested Parties" (apparently brothers) were the 2nd and 3rd intended Interested Parties therein and were both

represented therein by Messrs Munene Micheni & Co., the Advocates who have always also been on record herein for various parties, including Collins Kipkoech Murgor. This time, the same 2nd and 3rd Interested Parties have instructed Messrs Miyienda & Co. Advocates to act for them, and which is the law firm that has now filed the present Application. The gist of the previous Application for joinder made by the "Interested Parties", and which I dismissed in my said Judgment, is that they hold respective lawful title deeds for portions of the parcel of land initially known as L.R. No. 8309/3 (now Sergoit/Koiwoptaoi Block 8) and which, according to the Interested Parties, H. Omondi J (as she then was), by her Ruling of 12/05/2022, declared to form part of the estate of the deceased and thus available for distribution amongst the beneficiaries of the estate. To this extent, it is clear thar the same Applicants (as Interested Parties), advancing the same arguments as before, have returned to this Court for a "second bite of the cherry". Regarding the claims by the Interested Parties, this is what I stated in my Judgment:

a. Whether the Intended Interested Parties should be allowed to join these proceedings

> "48. ..... On their part, in regard to the property Sergoit/Koiwoptaoi Block 19, the 2nd and 3rd Intended Interested Parties (who are brothers) claim that they jointly purchased 100 acres from L.R. No. 8309/3 (now Segoit/Koiwoptaoi Block 8) from the deceased in the year 1983, and took possession.
>
> 49. In respect to allegations of the nature cited by the Intended Interested Parties, I refer to the decision of Musyoka J in the case of In the matter of the Estate of Stone Kakhuli Muinde (Deceased) [2016] eKLR. As herein, the case involved an Application by third parties for joinder into a Succession Cause. In dismissing the Application, the Judge stated as follows:
>
> .....
>
> 52. I fully associate myself with the views expressed in the said decisions and I am satisfied that the claims made by the Intended Interested Parties herein are matters that are squarely within the province of the Environment & Land Court (ELC) and not this High Court. Article 162(b) of *the Constitution* gives to the Environment and Land Court the sole mandate and jurisdiction to determine issues of ownership, use and occupation of land. This Court cannot usurp that role.
>
> "53. The parties who would be outright interested parties in a Succession Cause are beneficiaries, spouses and children. Creditors and any other persons with proven legal claims against the estate may, in appropriate cases and as guided under the *Law of Succession Act*, be also admitted as interested parties. I do not find this to be one such case and there are several reasons why I find it not viable to admit the Applicants as Interested Parties.
>
> "54. First, I consider the very late stage at which the Applicants have brought their claims. This Succession Cause was commenced in the year 2012, 12 years before the instant Applications now filed. The late William Murgor was a prominent son of the Elgeyo Marakwet County and a well-known veteran politician and as a result, this Cause has regularly received intensive media coverage. The Ruling by Omondi J (as she then was) which identified the properties forming the estate, was itself rendered in 2022, 2 years ago. For the Applicants, I would expect them to have had an even extra interest in the Cause considering their "interests" over land that they allege to have purchased from or was owned by the deceased. It is inconceivable that all this time, the Applicants would not have been aware of this Succession Cause and/or the progress thereof or that the

properties claimed by the Applicants were a subject of the Cause. In the circumstances, I am convinced that the Applicants must have always been aware of this Cause but never deemed it necessary to act. It is trite law that "equity aids the vigilant, not the indolent". The Applicants have offered no explanation whatsoever for the delay and/or why they had to wait until this matter is at the current stage of distribution for them to act. Allowing the Applicants to join this Cause at this late stage will, in my view, only delay the resolution of this already very old matter, prejudice the primary beneficiaries and only complicate the process further.

> "55. On the merits of the two Applications, the Advocates for the Objector-2nd Administrator, Enid Murgor and the Advocates for the 3rd Administrator, Sheila Murgor, respectively, have poked holes thereon. For instance, regarding the claim by Kipkosgei Arap Sang, they have argued that the Sale Agreement exhibited is between Samson E. Kibet and William Cherop Murgor, and that it does not therefore relate to Kipkosgei Arap Sang. They also argued that the Title Deed exhibited is indicated to have been issued to Kipkosgei Arap Sang on 4/10/2010, long after the death of the deceased which occurred on 28/092006, and which therefore amounts to intermeddling, and thus illegal. .....
>
> "56. Although the challenges raised against the claims lodged by the Intended Interested Parties are no doubt weighty, having found that the claims are improperly before this Court, I will restrain myself from making any comments or making any findings thereon lest I prejudice the claims that the Applicants may file before the Environment and Land Court.
>
> "57. Should the Applicants file suits before the Environment & Land Court, then at that stage, they may on the strength of the existence of such suits, return to this Court and seek stay of execution of the orders that may be given herein on distribution, pending determination of such suit.
>
> "58. For the foregoing reasons, I decline to allow joinder of the Applicants to this Cause as interested parties. The Applicants' remedy or recourse, if any, is at this stage, in another forum, not this probate Court.

47. It is therefore clear that I declined the Interested Parties' previous Application for joinder, first, for the reason that they had failed to explain why they sought to join the case at such very late stage, and by extension therefore, failed to explain the delay. The second reason was that the matters raised by the Interested Parties ought to be placed before the Environment and Land Court (ELC), and not this Probate Court. Insofar as the current Application seeks Review of my said findings, it has not even pointed out what "errors apparent on the face of the record" that the Court is alleged to have committed, or "discovery of any new evidence" that has now emerged. In fact, these being the recognized grounds for Review, were not even alleged in the Application (see the Court of Appeal cases of Nyamogo & Nyamogo -v- Kogo (2001) EA 174, and the case of Muyodi -v- Industrial and Commercial Development Corporation & Another (2006) 1 EA 243).

48. In their Supporting Affidavit in support of the present Application, the "Interested parties" have deponed as follows:

> 18. Thatwe further pray that since ownership of 100 acres was executed long ago in 1983, and titles acquired during the lifetime of the deceased who himself gave consent and executed transfers, we in the circumstances do not have a claim with the estate to take to the Environment and Land Court as that will take a long and expensive exercise.

22. Thatremoving/expunging our names will save a lot in terms of time, money and court's judicial space as we do not have to go to the Environment and Land Court".

49. It is therefore curious that, despite my express findings in the Judgment as set out above, without being alleged to have committed any "error apparent on the face of the record", and there being no allegation of "discovery of any new evidence", the "Interested Parties" have again come back advancing the same narrative as before. The Court having already made a finding that the claims preferred herein by the "Interested Parties" belong to the Environment and Land Court, no justifiable grounds have been presented to persuade this Court to depart from that position. The fact that one of the current Interested Parties was not involved in the earlier Application does not in any way change the legal position.

50. In any case, there is even no single specific finding made in the Judgment by this Court against any of the "Interested Parties" that would therefore support the prayer for "expunging" of their names from the proceedings as they were not even parties to the case, and no declarations or orders of any kind were sought against them in the first place. The only reference made to the "Interested Parties" in the Judgment was when the Court was simply reciting the Affidavits and/or Submissions made by the parties. The Application is therefore, in my view, wholly misconceived.

51. For the said reasons, I find no reason to entertain the prayer for removal/expunging of the "Interested Parties" names from the proceedings.

Final Orders

52. In view of above, the 3 Applications for stay of execution pending Appeal partially succeed, and I issue orders as follows:

    i. An order of partial stay of execution against the Judgement of this Court delivered on 20/12/2024 is hereby issued pending the hearing and determination of the respective intended Appeals against the same, only as against distribution (valuation and sale as ordered in the Judgment) of the following 6 specific properties only:

        a. Eldoret Municipality Block 4/84 claimed by James K. Murgor.

        b. Uasin Gishu/Kaptagat Scheme/416 claimed by Francis Murgor.

        c. Uasin Gishu/Kaptagat/417 claimed by Collins Kipkoech Murgor.

        d. Kapkoi Centre Plot No. 003, claimed by the estate of Mathew Kipruto Murgor.

        e. Sergoit/Koiwoptaoi Block 8/10 claimed James K. Murgor.

        f. Sergoit/Koiwoptaoi Block 8/6 claimed Collins Kipkoech Murgor.

    ii. The transmission of the rest of the estate as ordered in the Judgment is therefore not affected or barred by the above order of stay, and the same should proceed unabated.

    iii. This being a family matter, I direct that each party bears its own costs of the Applications.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 25TH DAY OF MARCH 2025

.....

WANANDA J. R. ANURO

JUDGE

Delivered in the presence of:

Mr. Philip Murgor, SC, with Mr. Ouma for Enid Murgor (Objector/2nd Administrator)

Ms. Akinyi h/b for Mr. Omusundi for Dr. James Murgor (a beneficiary)

Mr. Aseso for Sheila Murgor (3rd Administrator) and also 9 Interested Parties

Mr. Njuguna for Chemutai Murgor (2nd Petitioner/Former Administrator)

Mr. Miyenda for the Interested Parties

Court Assistant: Brian Kimathi