



In re Estate of Nom Okaro Muluka (Deceased) (Succession Cause 441 of 2004) [2025] KEHC 5418 (KLR) (29 April 2025) (Ruling)

Neutral citation: [2025] KEHC 5418 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 441 OF 2004
SC CHIRCHIR, J
APRIL 29, 2025
IN THE ESTATE OF NOM OKARO MULUKA (DECEASED)**

BETWEEN

**BILHA OLINGO MULUKA 1ST APPLICANT
SOPHIE AKOLA MULUKA 2ND APPLICANT
JUDITH AYUMA MULUKA 3RD APPLICANT**

AND

JOSEPH MARTIN MULUKA RESPONDENT

RULING

1. The Applicant's Notice of Motion dated 5/4/2024 seeks orders as follows;
 1. Spent
 2. That the Notice of Appeal dated 25/3/2024 be deemed as duly filed within time ,upon payment of requisite fee.
 3. Spent
 4. That pending the hearing and determination of the Appeal, the court be and is hereby pleased to stay the ruling delivered on 11/3/2024 on any consequential orders arising there from.

The Applicant's Case

2. It is the Applicant's case that the respondent have circumvented the court orders of 2/11/2023 which gave the respondents the liberty to file contempt proceedings; that the respondent have misinformed the police about the net effect of the orders given by the court on 11th March 2024; and that he is apprehensive of being arrested .



3. He further state that the 1st Administrator is currently mentally sick and is incapable of administering the estate and that the distribution of the estate would be detrimental to him as a beneficiary.
4. The Applicant further states that he would suffer loss if he is forced to remove the boundaries , demarcation and his house which he has put up on title No. Butso/Esimeiya/241.(The suit property); that the farm produce and livestock will be lost or damaged if he is barred from accessing the land.
5. He submits that he has an arguable appeal, is willing to make reasonable security for cost and the Application has been brought without undue delay.

The Respondents' case

6. The Application is opposed through the Affidavit of the 2nd Administrator/Respondent.
7. It is the Respondent's case that it is unclear as what the Applicant intends to Appeal against; that as regards the contempt proceedings , it is stated that there were no mandatory orders given to the respondents and the court merely advised the respondents to file for contempt if they so wish. It is further stated that there is no prejudice that would be suffered if the distribution of the estate proceeds.
8. The parties have filed submissions which I have duly considered.

Analysis and determination

9. The issues for determination are two: that is whether the Applicant's Notice of Appeal should be deemed as filed, and whether a stay of the Ruling dated 11th March 2024 should be granted.

Extension of time.

10. A perusal of the record shows that there is a Notice of Appeal filed on 24th March, 2024. The Ruling, forming the subject matter of this Application was delivered on 11th march 2024. The prayer for enlargement of time is therefore unnecessary as the Notice was filed within the stipulated period. As to whether such a Notice could be filed without the leave of the court is outside the purview of these proceedings.

Whether this court should stay the orders of 11th March 2024

11. The principles for granting stay pending Appeal are well settled. The Applicant must show that he will suffer substantial loss unless the stay is granted. That the application has been made without undue delay, and a provision of security, by the Applicant that would satisfy the performance of the decree or order in the event that the Appeal fails. (Ref: Order 42 rule 6 of the *Civil Procedure Rules*).It is also trite law that the Applicant has to demonstrate that he has an arguable Appeal with high chances of success.
12. The present Application was filed on 9/4/2024 while the ruling was delivered on 11/3/2024. I would not call a delay of one month inordinate. On security, the applicant has offered to comply with such orders on security of costs as may be ordered by this court.
13. On substantial loss, the Applicant has stated that he would suffer substantial loss if he is barred from accessing his home, farm and the livestock.
14. The Applicant has stated that his appeal has high chances of success. However, there is no draft memorandum of Appeal that has been attached to the Application. Further the Applicant's affidavit is silent on what issues he intends to place before the court of Appeal for determination. Without these issues being brought to the attention of the court, this court is not in a position to determine whether



the Applicant has an arguable Appeal or not. In other words, it is unknown what findings of this court does he intend to challenge because he has not faulted any of the findings of this court.

15. Further I have observed that that the Applicant has raised some issues which are extraneous to the ruling of 11/3/2024, and apparently, he is using the said issues to make a case for stay. He has brought up an issue of an alleged mental incapacity of the first administrator. This issue was not part of the ruling; there is no medical evidence to prove these allegations and more significantly, pursuant to the provisions of Section 81 of the Law of Succession Act the other two Administrators can still manage the Estate.
16. Further again, the allegation that the distribution of the estate is unfair to him has no relation to the subject ruling. The confirmation of Grant took place way back in October, 2022 and if the Applicant did not appeal against the mode in which the assets of the Estate was distributed, then it is too late for him to complain of unfairness in distribution. The issue of whether the respondent should get contempt orders before removing the Applicant from the suit property is in my view a diversionary tactic as that issue was not a subject matter of the ruling against which stay is being sought.
17. This attempt to use the issues highlighted on paragraph 15 and 16 above to procure stay of the ruling dated 11th March 2024 is mischievous and constitute an abuse of the court process.
18. The Applicant has failed to satisfy the all the conditions for granting of stay. The Application is hereby dismissed. Each party to meet their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY, AT ISIOLO ,THIS 29TH DAY OF APRIL 2025.

S. CHIRCHIR

JUDGE.

In the presence of:

Godwin Luyundi- Court Assistant

Ms Shelmith for the Respondent

