



REPUBLIC OF KENYA



**Bunyasi & 10 others v Mbalanya (Family Appeal E001 of 2025)
[2025] KEHC 5009 (KLR) (25 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5009 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
FAMILY APPEAL E001 OF 2025
WM MUSYOKA, J
APRIL 25, 2025**

BETWEEN

MARY BUNYASI 1ST APPELLANT
JOYCE WANDERA OMANYO 2ND APPELLANT
DAVIS OMANYO 3RD APPELLANT
CHRISTINE OMANYO 4TH APPELLANT
SAMUEL OMANYO 5TH APPELLANT
AMOS OMANYO 6TH APPELLANT
ABRAHAM OMANYO 7TH APPELLANT
GEORGE OMANYO 8TH APPELLANT
SARAH OMANYO 9TH APPELLANT
EUNICE OMANYO 10TH APPELLANT
JILOM OMANYO 11TH APPELLANT

AND

LUCY MBALANYA RESPONDENT

(An appeal arising from orders made in the ruling by Hon. Richard O. Odenyo, Senior Principal Magistrate, SPM, delivered on 15th January 2025, in Busia CMCSC No. 27 of 2016)

RULING

1. This ruling is in respect of an application, dated 17th January 2025, filed at the instance of the appellants. It seeks stay of execution of the ruling and orders made in Busia CMCSC No. 27 of 2016, pending



appeal. The High Court, in an appeal, had revoked a prior grant, and directed the trial court to appoint new administrators, upon hearing all the children of the deceased. The family sat and came up with a list of proposed administrators, but the trial court did not go by those proposals, and appointed administrators in its discretion.

2. The respondent has opposed the application, in an affidavit, sworn on 28th January 2025. She asserts that appointment of administrators is at the sole discretion of the court.
3. The appellants argued their application through written submissions, while the respondent submitted orally, in court, through her Advocate, Mr. Wycliffe Okutta.
4. The application before me is obviously misconceived. I will explain myself here below.
5. Firstly, a ruling is not capable of being stayed, once it has been delivered. Whereas it is possible to stay delivery of the ruling, by way of stopping a court from delivering it, once it is delivered there would be nothing to stay. Once a court pronounces itself in the ruling, that would be the end of the matter. The ruling would be out of the way. The only thing to be dealt with, thereafter, would be the orders made in that ruling, depending on whether they are capable of execution, for not all orders are executable by the parties.
6. Secondly, a distinction should be made between a ruling and the orders made in it. The ruling is the entire pronouncement by the court, inclusive of the recitals of the pleadings and other filings, narration of the evidence and testimonies, the analyses of all that, and the verdict. That cannot be executed. The orders come at the tail end, in the verdict, and it is the orders which are available for execution, if they are capable of being executed. The ruling and the order do not refer to the same thing, for the order is a subset of the ruling. An effort should always be made to identify the order in the ruling, to assess whether the same is executable, and, therefore, capable of being stayed.
7. The confusion, perhaps, has been brought by the fact that a judgement and a ruling are treated as being somewhat similar, and there could be a presumption that since a judgement can be set aside, so should a ruling. However, a ruling is not for setting aside, for it is the order in the ruling that is available for setting aside or vacating. The reason for this is that there is room for delivery of as many rulings as possible in a suit, and, therefore, there would be no necessity to set a ruling aside. Rather than set aside the ruling, another ruling would suffice, to address whatever the issue. However, there can be only 1 judgement in a suit. Where it is established that something had gone wrong, with the proceedings, before the judgement was pronounced, and fresh proceedings have to be conducted, culminating in a fresh judgement, the earlier judgment has to be set aside or vacated, to make room for the fresh proceedings and the fresh judgement thereafter. A first judgement would be an obstacle to a second judgement, but one ruling would not obstruct another ruling.
8. Thirdly, the order, comprised in the ruling of 15th January 2025, is in the nature of appointment of 3 administrators. That order is not capable of being executed. Because the court has already made the appointment, the said appointment cannot be stayed or stopped, for it has already happened. The 3 have already been appointed. The only thing would be to challenge the appointment, which the appellants have done by this appeal.
9. Fourthly, stay of execution, as a remedy, is available to the parties as against the other parties. It is about stopping the other party from executing the order. The nature of the order of 15th January 2025 is that it cannot be executed at the instance of the respondent or any of the other appointees or any of the other parties to the matter. The respondent or any of the other appointees are not capable of executing that order in any way. It is incapable of being executed. Execution of orders, capable of being stayed, should be understood from the context of Order 22 of the *Civil Procedure Rules*. There is nothing



the respondent or the other appointees can do to execute the said order appointing them, for they are already appointed by that order. The horse has literally bolted.

10. Fifthly, the stay of execution remedy is not available against the court making the impugned order. The stay of execution order cannot be directed against the court. It is not designed to stop the court, but the other party. The court made the order, and it cannot be stopped from executing it, as it is not the responsibility of the court to execute orders in the first place. I am alive to the fact that appointment of administrators should be followed by issuance of a grant of representation. However, the processing of such a grant, based on the order by the court, is not execution of that order, for the grant is the appointment itself, and the processing is by the court, and not the parties.
11. If I were allowed to speculate, I would hazard that the intent of the appellants, when I read between the lines, would be to prevent the appointees from taking office. However, the application has not been framed in a language that would make that intent obvious. Even if that were so, I would not grant it, for no estate should be left to lie in limbo, without administrators in place. The 3, appointed on 15th January 2025, should remain in office during the pendency of the appeal, to prevent wastage of the estate, to ensure compliance with any statutory obligations accruing to it, to attend to any emergencies that may arise in the interim, and to generally manage the estate in the usual way, as expected of them under the *Law of Succession Act*, Cap 160, Laws of Kenya, and the *Probate and Administration Rules*.
12. I believe that I have said enough to demonstrate that the application, dated 17th September 2024, is wholly misconceived, and it exists for the sole purpose of being dismissed, and I hereby do dismiss it. The costs of the application shall abide the outcome of the appeal. The appeal shall be mentioned on 14th May 2025, for directions on its disposal. It is so ordered.

DELIVERED VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 25TH DAY OF APRIL 2025.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Barasa Ouma, instructed by BM Ouma & Company, Advocates for the appellants.

Mr. Wycliffe Okutta, instructed by Ouma-Okutta & Associates, Advocates for the respondent.

