



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Leo Oduor Rajula (Deceased) (Succession Cause
12A of 2012) [2025] KEHC 4961 (KLR) (25 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4961 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
SUCCESSION CAUSE 12A OF 2012
WM MUSYOKA, J
APRIL 25, 2025**

RULING

1. The application, that I am called upon to determine, is dated 12th November 2024. It is at the instance of Rosemary Akinyi Wanjiri. It principally seeks stay of orders that were made in a ruling that was delivered herein on 3rd June 2020, confirming the grant, the distribution that followed, and an injunction, to restrain transmission of the estate pending hearing and determination of Kisumu CACA No. E117 of 2024.
2. The application was opposed, for there is an affidavit in reply, sworn on 17th January 2025.
3. The sole issue for determination is whether the order of 3rd June 2020 should be stayed.
4. The applicant had previously filed an application, dated 2nd March 2022, seeking the setting aside of the orders of 3rd June 2020. That application was dismissed on 4th May 2023, with the court opining that the applicant ought to have appealed. An appeal was subsequently lodged at the Court of Appeal, being Kisumu CACA No. E117 of 2024, and the applicant seeks stay of the orders of 3rd June 2020, pending hearing and determination of that appeal.
5. The principles that underpin grant of stay of execution are set out in Order 42 rule 6(2) of the Civil Procedure Rules. There are 3 conditions that the applicant is required to satisfy the court of, being that substantial loss may result, that the application has been brought without unreasonable delay and that security for due performance, as may be directed by the court, has been furnished. See *Kenya Shell Limited v Kibiru* [1986] KLR 410 (Platt, Ag JA) and *Vishram Ravji Halai v Thornton & Turpin* [1990] KLR (Gicheru JA, & Chesoni & Cockar Ag JJA).
6. I note that the applicant has filed the instant application 4 years after the orders were made. The delay in filing the application is both unexplained and unreasonable. During that 4-year period, the administrators have taken significant steps to execute the said orders, including having the estate subdivided, as a precursor to transmission. The subject-matter has been altered. The administrators have established that they had, after confirmation of their grant, obtained the lifting of a restriction on



the property, and they have partitioned the property to create several sub-titles. The execution, sought to be stayed, has, no doubt, substantially happened, and it would appear that there is nothing to stay.

7. I am not persuaded that the application meets the criteria for grant of the orders sought, and it is hereby dismissed. Each party shall bear their own costs. Orders accordingly.

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

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Ms. Azenga Alenga, Legal Researcher.

Advocates

Mr. Odigi, instructed by Nchogu Omwanza & Nyasimi, Advocates for the applicant.

Mr. James Were, instructed by Fwaya Masakhwe & Were, Advocates for the respondents.

