



In re Estate of Joseph Toroitich Cheronno (Deceased) (Succession Cause 46 of 2020) [2025] KEHC 6899 (KLR) (27 May 2025) (Ruling)

Neutral citation: [2025] KEHC 6899 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 46 OF 2020
RN NYAKUNDI, J
MAY 27, 2025**

IN THE MATTER OF THE ESTATE OF JOSEPH TOROITICH CHERONO (DECEASED)

BETWEEN

PATRICK TOROITICH CHERONO 1ST APPLICANT

RAYMOND CHERONO TOROITICH 2ND APPLICANT

**APPLYING/SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF
THE LATE ROSEBELLA TOROITICH CHERONO**

AND

RUTH JERONO CHERONO RESPONDENT

RULING

1. There are three pending applications before this court for determination. The first application which is dated 24th February, 2025 was filed by the petitioners herein seeking orders as follows:
 - a. Spent
 - b. Pending the hearing inter parties of this application there be an order of stay of enforcement of the Ruling of the Honourable Court given on 9th August, 2024.
 - c. That pending hearing and determination of the Appeal lodged in the Court of Appeal at Eldoret vide Civil Appeal No. E089 of 2024 there be an order of stay of enforcement of the Ruling of this Honourable Court dated 9th August, 2024 and the proceedings thereof.
 - d. Costs be in the cause.
2. The application is founded on several key grounds. On 9th August, 2024, the Honourable Court delivered a ruling that declined to consider matrimonial proprietary interest vested in the deceased



- estate and instead ruled that section 40 of the *Law of Succession Act* should apply in the distribution of the deceased estate.
3. The Applicants, being aggrieved by this ruling, subsequently lodged an appeal in the Court of Appeal at Eldoret (Civil Appeal No. E089 of 2024). Similarly, the Respondent also preferred to appeal against the same ruling and filed a Notice of Appeal dated 22nd August, 2024.
 4. The applicant argues that it is in the interest of justice that there be a stay of proceedings pending the hearing and determination of the appeal lodged in the Court of Appeal. It notes that the instant matter is sub judice in view of the pending Appeal. The applicant further contends that parallel proceedings in different superior courts could lead to conflicting decisions, potentially causing embarrassment to the Honourable Courts.
 5. The applicant asserts that the Respondent will suffer no prejudice if the orders sought are granted, particularly since she has also preferred to appeal. It emphasizes that the application is made in good faith and in the interest of justice. Finally, it argues that unless the enforcement of the ruling is stayed, the lodged appeal shall be rendered nugatory and the Applicants shall suffer prejudice.
 6. In response to the application, Ruth Jerono Cherono filed a replying affidavit sworn on 12th March, 2025. The Respondent, who is the surviving widow and a beneficiary of the estate of Joseph Toroitich Cherono (Deceased), contends that the application lacks merit and is designed to mislead this Honourable Court. She avers that the application's true purpose is to delay the distribution of the estate, thereby frustrating the delivery of justice.
 7. The Respondent submits that the ruling delivered by this Court on 9th August, 2024, which the Applicants seek to stay, merely provided directions on how the estate should be distributed among beneficiaries and did not effectuate actual distribution. She maintains that such a ruling is not capable of being stayed as it only articulated distribution guidelines rather than implementing the distribution itself.
 8. The Respondent further argues that the Applicants have failed to demonstrate the substantial loss they would suffer if the stay is not granted. She characterizes this matter as protracted due to numerous applications filed by the Applicants, suggesting that the current application represents another tactical manoeuvre to frustrate the proper administration of the deceased's estate and deplete assets to other beneficiaries' detriment.
 9. The Respondent also highlights the Applicants' inordinate delay in filing this application, noting it was submitted six months after the delivery of the ruling. She contends that the Applicants' appeal lacks triable issues with probability of success, characterizing it as a malicious attempt to retain control over the estate assets. She concludes by urging that justice would be best served by dismissing the application with costs.
 10. The next application dated 27th February, 2025 was filed by the Respondent who seeks orders as follows:
 - a. Spent
 - b. That the Grant of letters of administration intestate of the estate of Joseph Toroitich Cherono (deceased) issued on 23.6.2022 to Christopher Kipkemboi Cherono and Patrick Cherono be set aside.
 - c. That a fresh Grant of letters of administration intestate of Joseph Toroitich Cherono (deceased) be issued to Raymond Toroitich Cherno and Ian Kwambai Cherono.



- d. That costs be in the cause.
11. In support of the chamber summons, the Objector/Applicant Ruth Jerono Cherono deposed that the application is based on the grounds that the grant of letters of administration intestate of the estate of Joseph Toroitich Cherono (Deceased) was issued to Christopher Kipkemboi Cherono and Patrick Toroitich Cherono on 23rd June, 2022.
 12. The Objector/Applicant contends that Christopher Kipkemboi Cherono and Patrick Toroitich Cherono have failed to offer leadership in the administration of the estate of Joseph Toroitich Cherono (Deceased), leaving the same to be wasted. She further deposes that the administrators do not see eye to eye with the rest of the family members as they have their own personal misunderstandings, which is affecting the administration of the estate.
 13. According to the Objector/Applicant, the administrators, Christopher Kipkemboi Cherono and Patrick Toroitich Cherono, are an impediment to having this succession cause finalized as they have failed to offer leadership to other beneficiaries of the estate. She maintains that it is in the interest of justice and fairness that Raymond Toroitich Cherono from the first house and Ian Kwambai Cheronoh from the second house be made the administrators of the estate in place of Christopher Kipkemboi Cherono (second house representative) and Patrick Toroitich Cherono (first house representative) so that the estate can be effectively administered.
 14. The Objector/Applicant argues that the substitution is necessary so as to facilitate efficient distribution of the estate. She states that the application has been brought timely and in good faith, and none of the beneficiaries will suffer any prejudice if the prayers sought are granted as it is for the benefit of them all. The Objector/Applicant believes that the Honourable Court has jurisdiction and powers to entertain and grant the orders sought in the interest of justice and fairness.
 15. In response to the application, Patrick Toroitich Cherono, the 1st Administrator/Petitioner/Respondent, filed a replying affidavit sworn on 15th April, 2025. He draws the Court's attention to a significant procedural issue, noting that there is an appeal pending at the Court of Appeal following a ruling of the High Court on 9th August, 2024. He argues that this Honourable Court should stay any further proceedings pending the outcome of the said appeal, which is registered as Eldoret Court of Appeal Civil Appeal No. E089 of 2024. He maintains that it is in the interest of justice that these proceedings be stayed to pave way for the determination of the Court of Appeal.
 16. Mr. Cherono further alleges that the Applicant has lodged the current application in bad faith. He contends that the Applicant is asking the Court to substitute the administrators without providing any justifications for such action. According to his advocates' advice, which he believes to be true, the Applicant has not laid any basis for the proposed substitution.
 17. Regarding the proposed new administrators, he states that he does not object to Raymond Cherono being appointed as a co-administrator alongside Christopher Cherono, Kenneth Cherono, and himself. However, he strongly opposes the appointment of Ian Kwambai Cherono as an administrator based on several grounds:
 - a. Ian Kwambai is not a biological son of the late Joseph Cherono and therefore not an heir to the deceased's estate.
 - b. Ian Kwambai allegedly has a tainted character.
 - c. He has allegedly intermeddled with the deceased's estate by masquerading as an administrator, engaging in transactions detrimental to the estate.



- d. Ian Kwambai has purportedly sued third parties while falsely claiming to be an Administrator of the Estate, as evidenced by Eldoret ELC Court Case No. E037 of 2022.
 - e. He is currently facing a criminal case of malicious damage to property related to his actions as a purported administrator, referenced as Eldoret Chief Magistrate Criminal Case No. MCCR 1737/22.
 - f. His eagerness to be an administrator is allegedly ill-motivated and aimed at fleecing and defrauding the estate.
18. The deponent asserts that he has always served the administration of the estate diligently and there is no evidence before the Court demonstrating any mismanagement on his part. He urged the Honourable Court to dismiss the instant application, affirming that his statements are true to the best of his knowledge, information, and belief.
 19. The third application is dated 4th September, 2024 which essentially seeks a temporary injunction against all the beneficiaries from cutting trees, selling trees and burning charcoal, or in any other manner dealing and/or intermeddling with the property known as Uasin Gishu/Illula/1 and all other properties forming part of the estate of the deceased.

Petitioners' submissions

20. Learned Counsel Mr. Nabasenge submitted that the primary issue for determination is whether the enforcement of the ruling dated 9th August 2024 and the proceedings in this matter ought to be stayed pending the hearing and determination of the appeal lodged at the Court of Appeal as Civil Appeal No. E089 of 2024.
21. Counsel argued that both the Applicant and Respondent preferred to appeal against the ruling of 9th August 2024, with the Applicant lodging his appeal vide the Memorandum of Appeal dated 18th October 2024 and the Respondent filing a Notice of Appeal dated 22nd August 2024. He contended that unless the proceedings are stayed, the appeal will be rendered nugatory since the impugned ruling ruled out the applicability of the *Matrimonial Property Act* in the final distribution of the deceased estate.
22. With regard to the application seeking removal of administrators, Learned Counsel Mr. Nabasenge submitted that the Applicant Ruth Cheronoh has not laid a sufficient basis for removal of the current administrators. He maintained that the grounds cited failure to offer leadership, administrators not seeing eye to eye with other family members, and personal misunderstandings among administrators have not been substantiated with evidence.
23. Counsel emphasized that the Letters of Administration are yet to be confirmed, making it difficult to ascertain what kind of leadership is lacking. He further argued that personal misunderstandings cannot be a ground for removing administrators, particularly when there is no evidence presented to prove this allegation.
24. Learned Counsel strongly opposed the proposed appointment of Ian Kwambai Cheronoh as an administrator, characterizing him as "a man of tainted character" who is currently facing charges of fraud following questionable dealings with the deceased's estate. Counsel pointed to two ongoing court cases Criminal Case No. MCCR/E1737/2022 where he is charged with fraudulent dealings involving the deceased estate, and Environment and Land Case No. E037 of 2022 where he allegedly sued third parties while masquerading as the administrator of the estate.



25. As for the application seeking an injunction, Counsel submitted that evidence shows it is not only the 2nd Respondent who is allegedly cutting down trees and burning charcoal, but the Applicant Ruth Cherono herself is engaged in similar activities. He referred to annexed photographs in the Replying Affidavit that purportedly demonstrate the Applicant's involvement in the same activities she seeks to restrain.
26. In arguing for the stay of proceedings, Learned Counsel relied on the case of *William Odhiambo Ramogi & 3 others v Attorney General & 6 others; Muslims for Human Rights & 2 others (Interested Parties)* [2020] eKLR, which established six principles for the grant of stay of proceedings pending appeal. Counsel submitted that the Applicant has met all these principles, particularly emphasizing that the appeal raises substantial questions regarding the applicability of the *Matrimonial Property Act* to the distribution of deceased estates where polygamous families are involved.

Objector's submissions

27. The Court has considered the submissions filed by Learned Counsel Mr. Omwenga who essentially argued that the application for a temporary injunction should be granted to restrain the 2nd Petitioner/Respondent from engaging in activities that amount to intermeddling with the estate property prior to final distribution.
28. Counsel submitted that the 2nd Petitioner/Respondent is cutting trees, selling them, and burning charcoal on the property known as Uasin Gishu/Illula/1, which constitutes wasting the estate to the detriment of other beneficiaries. Counsel contended that the requirements for granting a temporary injunction have been met based on the principles established in *Giella v Cassman Brown & Co. Ltd* [1973] EA 358 and applied in *East African Development Bank v Hyundai Motors Kenya Limited* [2006] KECA 369 (KLR).
29. Mr. Omwenga outlined three key issues for determination: whether a temporary injunction should be issued against the 2nd Petitioner/Respondent pending estate distribution; whether the commanding officer of Ilulla Police Station should supervise compliance with the injunction; and who should bear the costs of the application.
30. In supporting the application, Counsel relied on Section 45 of the *Law of Succession Act*, which prohibits intermeddling with a deceased person's estate, making it a criminal offense. Learned Counsel cited various authorities, including *In The Matter Of The Estate Of Veronica Njoki Wakagoto (Deceased)* [2013] eKLR and *Re Estate Of Major Hudson Wafula* [2005] eKLR, where the Court stated that unless there is an order from the Court, the status quo pertaining as at the time of the death of the deceased has to continue and that there is need to protect the deceased's estate from the intermeddling of the interested party.
31. Further, Counsel cited *Mary Kemunto Musa & Another v Irene Kemunto Musa* [2013] eKLR, where the Court held that when beneficiaries are intermeddling with a deceased's estate, their actions must be halted until the respective beneficiaries' interests are clearly identified. Counsel submits that the risk of wasting the estate constitutes a prima facie case with a probability of success, satisfying the first requirement for an injunction, and argues that the Objector/Applicant and other beneficiaries stand to suffer irreparable loss if the injunction is not granted.
32. Counsel concludes by arguing that since the actions of the 2nd Petitioner/Respondent constitute intermeddling, the Court should exercise its inherent power under Rule 73 of the Probate and Administration Rules to issue the injunction in the interest of justice.



Analysis and Determination

33. Having considered the pleadings, affidavits, and submissions by the respective counsel, this Court is now tasked with determining the three applications: first, the Petitioners' application dated 24th February 2025 seeking a stay of proceedings pending appeal; second, the Respondent's application dated 27th February 2025 seeking removal of the current administrators; and third, the application dated 4th September 2024 seeking a temporary injunction against estate property interference.
34. These applications, though distinct in their prayers, are interconnected in that they all concern the proper administration and preservation of the estate of the late Joseph Toroitich Cheronu. The Court is mindful of its duty to ensure that the deceased's estate is administered effectively; that beneficiaries' interests are protected, and that the administration process moves forward expeditiously.
35. At the outset, this Court notes with concern that the Applicants have adopted a rather unconventional procedural approach in this matter. The Applicants have already lodged an appeal at the Court of Appeal without first seeking leave from this Court as required in succession matters. It is a well-established principle that there is no automatic right of appeal from the decisions of the High Court to the Court of Appeal on probate and administration matters. Leave is mandatory before such an appeal can be properly filed.
36. The Applicants' conduct in first proceeding to the Court of Appeal without requisite leave and then returning to this Court seeking a stay of proceedings raises questions about their procedural strategy. This approach appears to put the proverbial cart before the horse, as the proper sequence would have been to first obtain leave to appeal before lodging the appeal itself. The Court of Appeal in the case of *Rhoda Wairimu Karanja & Another -v- Mary Wangui Karanja & Another* [2014 eKLR made the following observations with regards to appeals in succession matters against the decisions of the High Court exercising its original jurisdiction:
- “We think we have said enough to demonstrate that under the *Law of Succession Act*, there is no express automatic right of appeal to the Court of Appeal; that an appeal will lie to the Court of Appeal from the decision of the High Court exercising original jurisdiction with leave of the High Court or where the application for leave is refused, with leave of this court. Leave to appeal will normally be granted where prima facie it appears that there are grounds which merits serious consideration. We think this is good practice that ought to be retained in order to promote finality and expedition in the determination of probate and administration disputes.”
37. Nevertheless, this Court, while noting this procedural irregularity, will proceed to consider the merits of the stay application in the interest of substantive justice and to avoid further delays in this already protracted matter.
38. The first application raises an important procedural question regarding whether this Court should stay proceedings pending the determination of an appeal at the Court of Appeal. Learned Counsel Mr. Nabasenge has argued that there exists an appeal concerning a substantive issue; the applicability of the *Matrimonial Property Act* to the distribution of this estate. The Court notes that both the Applicant and Respondent have lodged appeals against the ruling of 9th August 2024, indicating that this is indeed a contested legal issue worthy of appellate consideration.



39. Stay of Execution is provided under Order 42 Rule 6 of the *Civil Procedure Rules* 2010 as follows;

- “(1) No appeal or second appeal shall operate as a stay of execution or proceeding 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 order set aside.
- (2) No order for stay of execution shall be made under subrule (1) unless –
- (a) the court is satisfied that substantial loss may result to the 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.”

40. The three conditions to be fulfilled can therefore be summarized as follows;

- a. That substantial loss may result to the applicant unless the order is made.
- b. Application has been made without unreasonable delay.
- c. Security as the court orders for the due performance

41. These principles were enunciated in *Butt v Rent Restriction Tribunal* [1979] the Court of Appeal stated what ought to be considered in determining whether to grant or refuse stay of execution pending appeal. The court said that: -

- “a. The power of the court to grant or refuse an application for a stay of execution is discretionary; and the discretion should be exercised in such a way as not to prevent an appeal.
- b. Secondly, the general principle in granting or refusing a stay is, if there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should the appeal court reverse the judge’s discretion.
- c. Thirdly, a judge should not refuse a stay if there are good grounds for granting it merely because, in his opinion, a better remedy may become available to the applicant at the end of the proceedings.
- d. Finally, the Court in exercising its discretion whether to grant or refuse an application for stay will consider the special circumstances and its unique requirements. The court in exercising its powers under Order XLI Rule 4(2) (b) of the Civil Procedure Rules, can order security upon application by either



party or on its own motion. Failure to put security of costs as ordered will cause the order for stay of execution to lapse.”

42. Upon careful consideration of the application before me, I note a critical issue that undermines the Applicants' case. Learned Counsel for the Applicants has acknowledged in his submissions that there is no Certificate of Confirmation of Grant yet issued in this matter. This is a crucial point. The ruling of 9th August 2024, which the Applicants seek to stay, merely provided directions on how the estate should eventually be distributed, specifically rejecting the application of the *Matrimonial Property Act* in favor of section 40 of the *Law of Succession Act*. It did not effectuate any actual distribution of the estate.
43. In essence, there is nothing substantive to stay at this juncture. The estate has not been distributed, no assets have changed hands, and the beneficiaries' positions remain unaltered. The Court's ruling was directional rather than executory in nature. Without a Certificate of Confirmation of Grant, the estate distribution process has not advanced to a stage where any party could suffer substantial loss or prejudice.
44. The Applicants have failed to demonstrate with specificity what substantial loss they would suffer if the stay is not granted. Their assertions remain general and speculative. The Court must be satisfied not merely of potential loss, but of substantial loss that is directly attributable to the enforcement of the ruling in question.
45. The Court also notes the Applicants' delay in bringing this application. The ruling was delivered on 9th August 2024, yet the application for stay was not filed until 24th February 2025, a delay of approximately six months. No satisfactory explanation has been provided for this inordinate delay, thus failing to meet the second condition requiring applications to be made without unreasonable delay.
46. In light of these considerations and without going into every element to be satisfied for grant of stay, I am not persuaded that the Applicants have established a proper case for the grant of a stay of proceedings.

On the Application for Removal of Administrators dated 27th February, 2025
47. Turning to the second application, this Court must consider whether sufficient grounds have been established to warrant the removal of the current administrators. The office of administrator is founded on trust and goodwill. Breach of this position will invite court's intervention to ensure that justice is done to the beneficiaries and to protect the estate property.
48. Section 83(e) requires an administrator to within six months from the date of the grant, produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account. Under section 83(g) an administrator is obligated to complete the administration of the estate in respect of all matters within six months from the date of confirmation of the grant and to produce to the court a full and accurate account of the completed administration.
49. The Respondent alleges that the current administrators have failed to offer leadership, do not see eye to eye with family members, and have personal misunderstandings affecting estate administration. However, after careful scrutiny of the evidence presented, I find that these allegations remain largely unsubstantiated. No concrete evidence has been adduced to demonstrate how the administrators have failed in their duties, particularly given that the letters of administration are yet to be confirmed.



50. Of significant concern, however, is the proposed appointment of Ian Kwambai Cheronoh as an administrator. While the allegations raised about his character and legal entanglements are serious, this Court must exercise caution in making determinations about an individual's suitability without affording them the opportunity to be heard directly. The pending matters cited (MCCR/E1737/2022 and Environment and Land Case No. E037 of 2022) certainly warrant careful consideration, but it would be premature to draw definitive conclusions about his fitness to serve as an administrator without allowing him to address these concerns personally.
51. In the interest of procedural fairness and natural justice, it would be appropriate for all proposed administrators, including both the current administrators and those suggested as replacements, to appear before this Court to explain their positions, difficulties faced, and address any challenges or allegations raised. Such a hearing would provide valuable insights into the interpersonal dynamics affecting administration and allow for a more informed determination of who might best serve the interests of all beneficiaries.
52. Regarding the third application seeking a temporary injunction, the Court must carefully consider whether this matter warrants judicial intervention at this stage. While the Court is guided by the well-established principles for granting interlocutory injunctions, it must also weigh whether the application constitutes an efficient use of judicial resources and whether it genuinely serves the interests of proper estate administration.
53. The Court must then balance the competing interests of all parties involved while ensuring that estate assets are properly preserved until final distribution. The allegations regarding activities on the estate property require consideration within the framework of estate administration as a whole. Though every aspect of the estate deserves protection, the Court must evaluate whether these specific activities represent a significant and immediate threat to the estate's overall value that warrants extraordinary intervention through an injunctive order.
54. Furthermore, the Court observes that both parties have made allegations against each other regarding similar activities on the estate property. This creates a complex evidentiary situation that would potentially require substantial inquiry to resolve definitively. The Court must consider whether such an inquiry would advance the primary objective of efficient estate administration or potentially further delay the ultimate resolution of this matter.
55. While the Court takes all concerns regarding estate preservation seriously, it must also evaluate the most effective means of addressing these concerns within the broader context of the succession process. In some instances, comprehensive estate administration and proper accounting during the confirmation of grant process may provide a more efficient remedy than separate injunctive proceedings focused on specific activities.
56. After careful consideration of all evidence and submissions before this Court, it is evident that the most expeditious path forward for all parties involves moving the estate administration process toward confirmation of grant rather than engaging in protracted litigation over peripheral matters. The Court notes that none of the present applications substantially advances this primary objective. In fact, they appear to have introduced additional layers of complexity to an already intricate matter, yet there is an appeal at the Court of Appeal.
57. The Court further notes that while the Petitioner has indicated that an appeal have been lodged at the Court of Appeal vide Civil Appeal No. E089 of 2024, the status and procedural compliance of these appeal remains unclear given that there was no leave granted to file an appeal. Should the appeal be



properly constituted and ongoing at the Court of Appeal, the parties are at liberty to seek appropriate orders for stay of proceedings from the Court of Appeal if they consider such relief necessary.

58. Based on the foregoing analysis, I hereby make the following orders:

- a. The application dated 24th February 2025 seeking stay of proceedings pending appeal is hereby dismissed.
- b. The application dated 27th February 2025 seeking removal of current administrators is hereby dismissed. Given that the matter is pending before the Court of Appeal vide Civil Appeal No. E089 of 2024, any issues relating to the administrators should be appropriately addressed by the appellate court, and this Court declines to interfere with the current administrative arrangements pending the determination of the appeal.
- c. The application dated 4th September 2024 seeking temporary injunction is hereby dismissed.
- d. Each party to bear its own costs.

59. Orders accordingly.

DATED SIGNED AND DELIVERED AT ELDORET VIA EMAIL AND CTS, THIS 27TH DAY OF MAY 2025

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R. NYAKUNDI
JUDGE

