



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mutai v Siele (Civil Application E002 of 2025)  
[2025] KEHC 11373 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11373 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CIVIL APPLICATION E002 OF 2025**

**JK SERGON, J**

**JULY 31, 2025**

**BETWEEN**

**NANCY CHEPKEMOI MUTAI ..... APPELLANT**

**AND**

**KIPKOECH SIELE ..... RESPONDENT**

**RULING**

1. The application coming up for determination is a notice of motion dated 6th April, 2025 seeking the following orders;
  - (i) Spent
  - (ii) Spent
  - (iii) Spent
  - (iii) That there be a stay of execution and implementation of the ruling and order of the Chief Magistrate Court in Succession Cause No. E077 of 2022 by Hon C. Obulutsa delivered on 28th January, 2025 pending the hearing and determination of the proposed appeal.
  - (v) That the necessary directions be given.
2. The application is supported by grounds on the face of it and an affidavit in support of the application sworn by Nancy Chepkemoi Mutai, the appellant/applicant herein.
3. She avers that the respondent is her brother and that they are both children and beneficiaries of the late Joseph Cheriro who died intestate on 13th January, 2016 and that their late father was the proprietor of Kericho/Sosiot/591.



4. She avers that she petitioned for letters of administration in her capacity as a daughter of the deceased vide Succession Cause No. E102 of 2023 and was issued with a grant of letters of administration in respect to the estate of her father.
5. She avers that she filed summons for confirmation of grant and proposed that the estate of her father be shared equally and that before the grant could be confirmed, she learnt that the respondent had petitioned for letters of administration intestate, issued with a grant of letters of administration intestate and a certificate of confirmation issued on 26th October, 2023 vide Succession Cause No. E077 of 2022 and that the estate of the deceased was distributed solely to the respondent.
6. She avers that she filed an application seeking that the court review and/set aside its orders dated 17th January, 2023 granting letters of administration to the respondent, the main grounds of her application being that she was not privy to the succession proceedings in Succession Cause No. E077 of 2022 and had filed concurrent proceedings vide Succession Cause No. E102 of 2023 in respect to the estate of the deceased and proposed to have the estate distributed equally.
7. She avers that the court vide a ruling dated 28th January, 2025 dismissed the said application entirely.
8. She avers that she is aggrieved that the grant confirmed in Succession Cause No. E077 of 2022 was obtained fraudulently and in a bid to disinherit her of her rightful share of her father's estate.
9. She avers that being aggrieved with the said ruling she filed a notice of appeal and filed a draft memorandum of the appeal.
10. She avers that she has an arguable appeal with high chances of appeal and is willing to offer security and/or abide by the terms of this Court. She is adamant that unless an order for stay of execution and/or implementation of the said ruling is granted she stands to suffer loss and prejudice as the substratum of the appeal would be lost before this court renders itself on the intended appeal.
11. Kipkoech Siele, the respondent filed a replying affidavit in response to the instant application.
12. He deposes that the applicant's appeal has no chances of success. The judgment of the Trial Court was delivered after consideration of the facts and the applicable law.
13. He further deposes that the applicant participated in the succession proceedings until the grant was confirmed and that the issue of distribution of the estate of deceased had been resolved when the applicant and her husband Jackson Mutai confirmed to the clan elders that they were contented with her husband's parcel of land which is more than 15 acres.
14. It is his deposition that this Court ought to find that the application for stay is frivolous, vexatious and intended to delay the distribution of the estate and should therefore dismiss it with costs.
15. The application came up for inter partes hearing. The learned counsel for the appellant/applicant reiterated that he would be relying on grounds set out on the notice of motion and supporting affidavit. The learned counsel for the respondent stated that they would be relying on the averments in their response.
16. I have considered the application, replying affidavit and oral submissions by the parties and find that the issue for determination is whether to stay the execution and implementation of the ruling and order of the Chief Magistrate Court in Succession Cause No. E077 of 2022 delivered on 28th January, 2025 pending hearing and determination of the intended appeal.
17. It is trite law that an appeal does not operate as an automatic stay of execution. The conditions which a party must establish in order for the court to order a stay of execution are provided for under Order 42



Rule 6(2) Civil Procedure Rules to wit; substantial loss may result to him/her unless the order is made; the application has been made without unreasonable delay; and the applicant has given such security as the court orders for the due performance of such decree or order as may ultimately be binding on him.

18. The applicant has indicated that she stands to suffer substantial loss as she will be disinherited of her rightful share in the deceased's estate.
19. The filed the instant application two months after the court rendered its ruling and offered no plausible explanation for the delay, however, it is this court's considered view that the delay is not inordinate. This court notes that the applicant has not offered security.
20. The right of appeal must be balanced against an equally weighty rigid right of the plaintiff to enjoy the fruits of the judgment delivered in his favour. In the case of *Mohammed Salim t/a Choice Butchery vs Nasserpuria Memon Jamat* (2013) eKLR where the Court upheld the decision of *Portreitz Maternity v James Karanga Kabia* Civil Appeal No 63 of 1991 and stated that: "That right of appeal must be balanced against an equally weighty rigid right that of the plaintiff to enjoy the fruits of the judgment delivered in his favour. There must be a just cause for depriving the plaintiff of that right." The issue in the balancing of the parties rights is whether there is just cause for depriving the respondent her right of enjoying her judgment. On one part, the respondent states that the applicant has not satisfied the conditions to warrant her stay of execution and failed to demonstrate and prove the specific details and particulars of the kind of loss and or damage that the applicant is likely to suffer should the order of stay fail. On the other part, the applicant is adamant that the appeal will be rendered nugatory if the respondent proceeds to implement the confirmed grant before the appeal is determined. This court has considered the respective cases of the parties and is of the considered view that the respondent will not be prejudiced by the act of granting the orders sought.
21. This court has perused the grounds of appeal and noted that the applicant intends to appeal on the mode of distribution. Without going into the merits of the appeal, opines that the intended appeal raises arguable points of law and that the appeal may be rendered nugatory if the suit land is subdivided as per the terms of the confirmed grant. There is a need therefore to preserve the subject matter of the appeal to prevent the appeal being rendered nugatory.
22. Consequently, I find that this application has merit and it is hereby allowed giving rise to issuance of the following Orders:-
  - (i) That an order for stay of execution pending appeal is hereby granted on condition that the applicant deposits Kenya Shillings Two Hundred Thousand (200,000/=) in Court within thirty (30) days from the date hereof.
  - (ii) That in default of the said amount, the orders for stay shall stand vacated.
  - (iii) That costs of this application shall abide in the appeal.

**DELIVERED, SIGNED AND DATED AT KERICHO THIS 31ST DAY OF JULY, 2025.**

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**J.K. SERGON**

**JUDGE**

In the Presence of:-

C/Assistant – Rutoh

Miss Cheronon holding brief for Langat for Appellant



Miss Amaya holding brief for Korir for Respondent

