



**Nyawera v Miunge (Civil Appeal E199 of 2023)
[2024] KEHC 349 (KLR) (25 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 349 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E199 OF 2023**

TW CHERERE, J

JANUARY 25, 2024

**IN THE MATTER OF THE ESTATE OF MARY WAITHIRA
ABDURAHMAN ALIAS KHADIJA MATHENGE (DECEASED)**

BETWEEN

FRIDAH NYAWERA APPELLANT

AND

ABDIRAHMAN MUWEKA MIUNGE RESPONDENT

RULING

Introduction

1. By judgment dated 26th October, 2023, the trial Court in Isiolo Kadhi Succession Cause No. E001 of 2023 determined that Applicant/Appellant is not a beneficiary of deceased's seat.
2. By notice of motion dated 10th November, 2023 and filed on 16th November, 2023, Applicant seeks orders for:
 1. Stay of execution of the judgment dated 26th October, 2023 and the decree thereof
 2. Temporary injunction to restrain the Respondent, his agents, employees, servants advocates, auctioneers or any other person acting on his behalf from interfering, intimidating, harassing, evicting and/or in any other manner interfering with the property known as Plot. 7918/147 Isiolo Town pending the hearing and determination of this appeal
 3. Costs be provided for
3. The application is based on the grounds among others that Appellant being dissatisfied with the lower court's decision preferred this appeal and Respondent has began intermeddling with the suit property and has threatened to evict the Appellant and also instructed tenants to pay rents to him.



4. The application is equally supported by an affidavit sworn by the Appellant on 14th November, 2023 in which she reiterates the grounds on the face of the Application.
5. By his replying affidavit sworn on 02nd January, 2024, Respondent opposes the application on the grounds among others that Applicant stays in Nairobi and her allegation that she has been threatened with eviction is untrue. Respondent denies intermeddling with the estate which he says is his home and avers that all he has done is request that rents be paid to him and not the Appellant. Additionally, Respondent denies that Appellant is likely to suffer any irreparable damage by being deprived of rental income.

Analysis And Determination

6. I have carefully considered the application in the light of the affidavits on record.
7. The issues that have arisen from the affidavits are that Respondent lives on the dispute property while the Appellant does not. That being the case, the allegation that Respondent is intermeddling with the estate property or has threatened to evict the Appellant does not lie.
8. It is not disputed that prior to the delivery of the judgment dated 26th October, 2023, rents due from the estate were paid to the Appellant and not to the Respondent and Appellant's appeal cannot in the circumstances be dismissed as a sham.
9. Whereas the dispute currently concerns collection of rents which are quantifiable, I find that it would be in the interest of justice to secure the rents pending the hearing and determination of the appeal.
10. For the reasons given on the assessment above, it is hereby ordered:
 1. Pending the hearing and determination of this appeal, there shall be a stay of judgment dated 26th October, 2023 and decree issued in Isiolo Kadhi Succession Cause No. E001 of 2023
 2. Pending the hearing and the determination of the appeal, rents due from Plot. 7918/147 Isiolo Town shall be deposited into a joint account of both the Appellant and the Respondent
 3. In the event that the parties fail to open an account in the next 14 days, rents due shall be paid into court
 4. Appellant is directed to file and serve the record of appeal in the next 45 days
 5. Pursuant to section 65 (1) (c) of the *Civil Procedure Act*, the Deputy Registrar of this court is directed to liaise with the Chief Kadhi to appoint assessors that will sit with the judge during the hearing of the appeal
 6. Costs shall abide the outcome of the appeal
 7. Mention on 29th April, 2024 to confirm compliance with these orders and for direction as to the disposal of the appeal

DATED IN MERU THIS 25TH DAY OF JANUARY 2024.

WAMAE. T.W. CHERERE

JUDGE

Appearances

Court Assistants - Kinoti/Munene



For Appellant - Mr. Mwititi for Mutuma & Gichuru Associates Advocates

For Respondent - Mr. Mwirigi for Mukira Mbaya & Co. Advocates

