



In re Estate of Twarugoji Kirimunya (Deceased) (Succession Cause 351 of 2002) [2024] KEHC 4080 (KLR) (25 April 2024) (Ruling)

Neutral citation: [2024] KEHC 4080 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 351 OF 2002
EM MURIITHI, J
APRIL 25, 2024**

BETWEEN

JEREMIAH M’NJOGU APPLICANT

AND

MARTHA NAITORE M’MURITHI RESPONDENT

RULING

1. By a notice of motion under certificate of urgency dated 22/6/2023 the applicant seeks that, “This Honourable Meru High Court be pleased to stay execution of its Rulings given on the 30th Day of May 2023 pending intended appeal in the Kenya Court of Appeal at Nyeri.”
2. In his supporting affidavit sworn on even date, the applicant faults the court for ignoring the fact that the actual portion of each party has not been ascertained on the ground and therefore the order is likely to prejudice his rights over the disputed parcel of land. The said ruling contradicts and is prejudicial to the consent order made on 17/5/1988 in the Court of Appeal Civil Application No 7 of 1988 and Court of Appeal Civil Application No 43 of 1991. His intended appeal has high chances of succeeding and if stay is not granted, he stands to suffer substantial and irreparable loss. This court’s order of 8/12/2021 contradicts its own orders and those of the Court of Appeal, and the same should not be implemented by the Land Registrar until this matter is put to rest by the Court of Appeal.
3. The application was not responded to.

Submissions

4. The applicant urges that the Respondent did not seek to set aside the stay of execution which is already in force before she sought orders to deal with the suit land, which makes her orders to be a hover. He urges that the Respondent cannot implement the granted court orders in the face of this court’s stay of execution order. He urges that this court will be not be doing justice by forcing the County Land Registrar to implement its decree against the County Land Registrar’s commitment to implement the



court of appeal consent order as illustrated by the County Land Registrar by official letter Ref: MER/ADM/16/VOL. V/48 dated 1/11/2010 addressed to Leonard K. Ondary Advocates and copied to the state counsel litigation Attorney General Chambers, Deputy Registrar Meru Law Courts, this court and Chief Land Registrar Nairobi. He urges that his case can be heard and determined in his absence due to unavoidable circumstances.

5. The respondent urges that the orders of 30/5/2023 did not compel the applicant to do anything and as such, they are negative orders incapable of being stayed, and cites *Equity Bank Ltd v Taiga Adams Company Ltd* (2006) eKLR, *Elena D. Korir v Kenyatta University* (2012) eKLR, *RWW v EKW* (2019) eKLR, *Corporate Insurance Company Limited v Hurlingham Park Limited* (Civil Application E030 of 2023) [2023] KECA 523 (KLR) (12 May 2023) (Ruling) and *Raymond M. Omboga v Austin Ryan Maranga Kisii HCCA No 15 of 2020*. She urges that if stay is granted, it will occasion a grave injustice to her as she is yet to enjoy the fruits of the impugned orders, and prays for the dismissal of the application with costs.

Analysis and Determination

6. The issue for determination is whether stay of execution should issue.
7. It is generally accepted that where there is no positive order capable of being executed, a stay of execution ought not to be issued. As this court said in *Trident Insurance Company v Dennis Mutwiri* [2021] eKLR,

“There is, in the legal acceptance of the term, nothing to stay in a negative order which does not compel or require the doing or the taking of any action.”

8. The Court of Appeal in *AG v James Hoseah Gitau Mwara* [2014] eKLR remarked that in order for a Court to exercise its discretion to grant stay, it must ask itself the question whether there is anything capable of being stayed in the impugned ruling.
9. In its impugned ruling of 30/5/2023, this court dismissed the applicant’s application dated 7/7/2022 and rendered thus;

“The court finds that the applicant has not met the threshold set out in section 76 of the *Law of Succession Act* to warrant revocation of the grant issued to the respondent. Besides, the existence and pendency of similar matters in other courts being the Court of Appeal and the Environment and Land Court is not in itself a ground for revocation of the grant herein. The revocation sought by the applicant is a back door attempt to have this court review its decision of 23/11/2020, which this court must frown upon for want of jurisdiction. Since the applicant has already moved to the Court of Appeal, he cannot now come back to this court under the guise of seeking revocation of the grant under the very grounds the court addressed its mind to when it delivered the decision sought to be appealed against. If an applicant contends that the court’s decision was based on the wrong conclusion of law and or fact, the proper course is to appeal the decision, and not to file a repeat application on the same grounds earlier disposed...Accordingly, for the reasons set out above, the court makes the following orders: 1. The applicant’s application dated 7/7/2022 is hereby dismissed.”

10. This court finds that the impugned order of 30/5/2023 was a negative one incapable of being executed and, therefore, there is nothing to stay.



Orders

11. Accordingly, for the reasons set out above, the Court finds, respectfully, that the applicant's application dated 22/6/2023 is without merit and it is dismissed.
12. There shall be no order as to costs.

Order accordingly.

DATED AND DELIVERED THIS 25TH DAY OF APRIL, 2024.

EDWARD M. MURIITHI

JUDGE

Appearances

Mr. Nyenyire for Mr. Njogu Applicant

Mr. Katana for the Respondent

