



**In re Estate of William Cherop Murgor (Deceased) (Succession Cause 112 of 2022) [2024] KEHC 5907 (KLR) (24 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5907 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 112 OF 2022  
JRA WANANDA, J  
MAY 24, 2024**

**IN THE MATTER OF THE ESTATE OF WILLIAM CHEROP MURGOR (DECEASED)**

**BETWEEN**

**MATTHEW KIPRUTO MURGOR ..... 1<sup>ST</sup> APPLICANT  
COLLINS KIPKOECH MURGOR ..... 2<sup>ND</sup> APPLICANT  
FLORENCE CHEPKEMEI MURGOR ..... 3<sup>RD</sup> APPLICANT  
DR JAMES MURGOR ..... 4<sup>TH</sup> APPLICANT  
FRANCIS MURGOR ..... 5<sup>TH</sup> APPLICANT  
CHEMUTAI MURGOR ..... 6<sup>TH</sup> APPLICANT**

**AND**

**SHEILA MURGOR ..... 1<sup>ST</sup> RESPONDENT  
ENID CHEPTANUI MURGOR RONO ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This Ruling relates to 3 separate Applications, which read together, seek leave to appeal, stay of execution and stay of proceedings. All 3 Applications arise from the 121-page Ruling delivered herein on 12/05/2022 by H. Omondi J (as she then was). Being therefore related, it was agreed, and I directed, that the Applications be consolidated and be heard and determined together.
2. Since there have been several Applications filed in this matter, confusion continues to arise over the naming/titling of the parties including their descriptions since the same keeps on changing with each new Application filed. For the purposes of this Ruling therefore and for ease of reference, I have consolidated the Applicants in the 3 Application and listed them as 1<sup>st</sup>-5<sup>th</sup> Applicants. I have also



consolidated the rest of the parties who have participated in this matter before and listed them as 1<sup>st</sup>-3<sup>rd</sup> Respondents.

3. I may also mention that Francis Murgor (5<sup>th</sup> Applicant) and Chemutai Murgor (6<sup>th</sup> Applicant) were the Petitioners in this Cause and therefore the initial Administrators. The 2<sup>nd</sup> Respondent herein, Enid Murgor was the Objector. The two initial Administrators were however, pursuant to the orders made herein on 12/05/2022 and on 13/06/2022, replaced and/or substituted, respectively. The new Administrators, representing 4 of the 5 houses/widows' family, therefore became Francis Murgor (5<sup>th</sup> Applicant), Enid Murgor (2<sup>nd</sup> Respondent), Lawrence Murgor (now deceased) and Sheila Murgor (1<sup>st</sup> Respondent). By the further consent orders made on 15/12/2023, the said Lawrence Murgor having later died, was replaced by one Josephina Kandie Murgor.
4. Coming back to the 3 Applications, the same were filed in May/June 2022 but delayed to be heard because the parties have been filing a plethora of Applications, one after the other with no end in sight and whose only "benefit" has been to unnecessarily drag and stall the progress of this whole Cause.
5. Be that as it may, in the said Ruling, H. Omondi J (as she then was), ordered as follows:
  - a. Pending the final distribution of the Estate of the deceased, the households of Mrs. Soti Murgor, Mrs Rosa Kimoi Murgor, Mrs Anna Kimoi Murgor and Mrs. Philomena Kimoi Murgor each nominate one representative for appointment as administrators in the estate.
  - b. The Respondents be restrained from exercising any powers over the estate of the deceased, pending submissions of names of 4 proposed administrators reflective of separate houses.
  - c. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents provide a comprehensive financial account for the administration of the estate from the date of their appointment as administrators, to the present date.
  - d. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents pay into court all rental income received from the date of their appointment as administrators, to the present date including cash held in the estate's bank accounts to facilitate distribution to the widows in keeping with their life interest in the estate of the deceased.
  - e. The 3<sup>rd</sup> Respondent and Florence C. Murgor be restrained from intermeddling or otherwise managing the property of the estate, specifically Plot No. Eldoret Municipality/Block 4/84, pending final distribution of the estate.
  - f. The 3<sup>rd</sup> Respondent and Florence C. Murgor be ordered to pay into court all rental and other income derived from Plot No. Eldoret Municipality/Block 4/84 including the rent paid by Caltex Oil Kenya Ltd and Total Kenya Ltd for the last 20 years, pending final distribution of the estate.
  - g. James K. Murgor had been in possession of/gifted Irong/Kessup/52- 28HA (70 acres, during the lifetime of the deceased, this parcel shall not form part of the estate to be distributed.
  - h. The following are readily available for partial distribution; Eldoret Municipality Block 4/83 Eldoret Municipality Block 4/84 Iten/ Irong 984,993,994,995,996,997,998,1001,1002,1003 and 1005 Iten



Township/054LR No. Sergoit/Koiwaptaoi Block 8/10Plot No.003 Kapkoi Centre 73 acres of Chepsigot Farm (and all the portions where the beneficiaries obtained title after the demise of the deceased but excluding parcels whose transactions were done during the lifetime, and are supported by records from Advocate Birech's Office.

6. The 1<sup>st</sup> Respondent referred to in the above Order is Francis Murgor (5<sup>th</sup> Applicant herein), the 2<sup>nd</sup> Respondent is Chemutai Murgor (6<sup>th</sup> Applicant herein) and the 3<sup>rd</sup> Respondent is one Dr. James Murgor (4<sup>th</sup> Applicant herein)
7. Again, returning to the 3 Applications herein, the 1<sup>st</sup> is the one dated 25/05/2022 and filed through Messrs Munene Micheni & Co. Advocates acting for the 1<sup>st</sup>-3<sup>rd</sup> Applicants, namely, Mathew Kipruto, Murgor, Collins Kipkoech Murgor and Florence Chepkemoi Murgor. It seeks orders as follows:
  - i. [.....] Spent
  - ii. [.....] Spent
  - iii. That there be a stay of execution against the Ruling and Order of this Court (Honourable Justice H.A Omondi) delivered on 12<sup>th</sup> May 2022 pending the hearing and determination of the intended Appeal.
  - iv. There a stay of proceedings be hereby issued in the Cause pending the hearing and determination of the intended Appeal.
  - v. Costs of the application be in the appeal.
8. The grounds of the Application are as set out on the face thereof and it is supported by the Affidavit sworn by the 1<sup>st</sup> Applicant, Matthew Kipruto Murgor. In the Affidavit, it is deponed that the deceased is the father of all the 3 Applicants who had applied to join this Cause as beneficiaries of the estate of the deceased primarily to adduce evidence of being valid recipients/owners of inter vivos gifts and to challenge the claim of intermeddling raised against their siblings, that by the said Ruling delivered on 12/05/2022, the Application was dismissed and titles in the names of the 1s-3<sup>rd</sup> Applicants declared part of the estate and thus available for distribution, that aggrieved with parts of the Ruling, they lodged a Notice of Appeal, and that the Appeal is arguable as appears in the draft Memorandum of Appeal.
9. He deponed further that if the prayers are not granted, they will suffer substantial loss and be further prejudiced as the Cause shall/may proceed to appoint new Administrators, invite Applications for contempt of Court, conduct partial distribution and properties belonging to the Applicants will form part of the estate and be available for distribution. It was further deponed that the Application has been filed expeditiously and that in Succession matters, leave to appeal is necessary before appealing against a decision of the High Court while exercising its original jurisdiction.
10. The 2<sup>nd</sup> Application is the one dated 30/05/2022, filed through Messrs Morgan Omusundi Law Firm, the Advocates acting for the 4<sup>th</sup> Applicant, Dr. James Murgor and which seeks orders as follows:
  - i. [.....] Spent
  - ii. That the 3<sup>rd</sup> Respondent/Applicant be granted leave to appeal against the Ruling of the Honourable Court delivered on 12<sup>th</sup> May, 2022.
  - iii. The ruling herein delivered on the 12<sup>th</sup> day of May, 2022 together with the proceedings made herein against the 3<sup>rd</sup> Respondent/Applicant together with all consequential orders made



thereto be stayed in the interest of natural justice and fairness and leave of right of appeal thereto

11. The grounds of the Application are as set out on the face thereof and it is supported by the Affidavit sworn by the 3<sup>rd</sup> Applicant. In the Affidavit, it is deponed that dissatisfied with the said Ruling, he lodged a Notice of Appeal, that the intended Appeal has high chances of success, that he is aggrieved by the ruling on free properties for distribution plus the injunctive orders issued, that the Objector/ Respondent will not suffer prejudice if the orders are granted.
12. The 3<sup>rd</sup> and final Application is the one dated 30/05/2022 and filed through Messrs Chebii & Co. Advocates acting for the 5<sup>th</sup> and 6<sup>th</sup> Applicants herein, Francis Murgor and Chemutai Murgor. It seeks orders as follows:
  - i. [.....] Spent
  - ii. [.....] Spent
  - iii. That this Honourable Court be pleased to order stay of execution of the ruling given on 12<sup>th</sup> May 2022, pending the hearing and determination of the intended Appeal.
  - iv. That the costs of this application be provided the appeal.
13. The grounds of the Application are as set out on the face thereof and it is supported by the Affidavit sworn by the 5<sup>th</sup> Applicant, Francis Murgor. He deponed that aggrieved with the decision of 12/05/2022, they filed a Notice of Appeal, that the deceased (their father) had settled them on their respective portions of land and they also hold title deeds in respect thereto, that the Ruling varied their occupation and entitlements and it is only fair that there be stay of execution pending appeal, that they stand to suffer irreparable loss if the orders are not granted and the appeal will be rendered nugatory unless stay is granted, that the Application has been filed promptly and they are willing to abide by the orders that the Court may grant as regards security though this is a family matter and each party is enjoying the estate to a good extent.

### **Grounds of Opposition**

14. The only response to the Application that I have come across is the Grounds of Opposition filed through Messrs ORB & Co., the Advocates acting for Sheila Murgor. In the same, it is stated that the Applications are fatally defective, that the Application by Francis Murgor & Chemutai Murgor seeks stay pending appeal though leave to appeal has not been sought, that the Notice of Appeal by Dr. James Murgor has not been lodged with the Court, that the Supporting Affidavit of Matthew Kipruto Murgor is incompetent for want of proper authorization from the other parties, that the Applications are meant to delay conclusion of this Cause to the benefit of the Applicants and that the estate continues to waste away.

### **Hearing of the Applications**

15. It was agreed, and I directed, that the Applications be canvassed by way of written Submissions. Pursuant thereto, Messrs Munene Micheni & Co., the Advocates acting for the 1<sup>st</sup>-3<sup>rd</sup> Applicants, Mathew Kipruto Murgor, Collins Kipkoech Murgor and Florence Chepkemai Murgor, filed their Submissions on 4/07/2022 while Messrs Chebii & Co., Advocates acting for the 5<sup>th</sup>-6<sup>th</sup> Applicants, Francis Murgor and Chemutai Murgor, filed their Submissions on 19/04/2024 although the same is dated 8/01/2024.



### **Submissions by Messrs Munene Micheni & Co.**

16. Counsel for the 1<sup>st</sup>-3<sup>rd</sup> Applicants (Mathew Kipruto Murgor, Collins Kipkoech Murgor and Florence Chepkemoi Murgor) submitted that the Grounds of Opposition filed on behalf of the 1<sup>st</sup> Respondent, Sheila Murgor, merely attempts to relitigate the proceedings of the trial Court and does not address whether the Application has met the grounds for granting the prayers sought. He cited several authorities and regarding stay of proceedings, submitted that this is an exceptional case ripe for grant thereof.

### **Submissions by Messrs Chebii & Co.**

17. Counsel for the 5<sup>th</sup> and 6<sup>th</sup> Applicants, Francis Murgor and Chemutai Murgor, submitted that they are in the use, possession and occupation of the parcels of land allocated to them by their late father and they have developed them, thus they will suffer irreparable loss and damage and at the same time, their appeal will be rendered nugatory if the orders of stay are not granted. Counsel then basically reiterated the matters already set out in his clients' Supporting Affidavit.

### **Determination**

18. Before I proceed further, I may mention that while in the course of finalizing this Ruling, I came across the letter dated 5/04/2024 from Messrs ORB & Co., the Advocates acting for the 1<sup>st</sup> Respondent, Sheila Murgor, informing the Court that 2 persons in this Cause, namely, Philomena Kimoi Murgor described as the 5<sup>th</sup> house matriarch and Mathew Kipruto Murgor, one of the Applicants herein, have since died. According to the Advocates therefore, the 1<sup>st</sup>-3<sup>rd</sup> Applicant's Application dated 25/05/2022 in which the said Mathew Kipruto Murgor is one of the Applicants cannot proceed. Since this Court has however not been formally moved in the recognized manner, and although I have no reason to doubt the truthfulness of the information contained in the letter, the contents of the said letter cannot, by themselves, bar this Court from finalizing and delivering this Ruling.
19. I also came across the letter dated 12/04/2024 from Messrs Munene Micheni & Co., the Advocates acting for 1<sup>st</sup>-3<sup>rd</sup> Applicants conveying a complaint against the Administrators, or some of them, accusing them of harassing and intimidating the tenants occupying the parcel of land known as Eldoret Municipality Block 4/84. For this issue to be addressed, Counsel certainly is aware of the procedure of moving the Court, if necessary.
20. Regarding the contents of the Grounds of Opposition filed by Messrs ORB & Co., the Advocates acting for the 1<sup>st</sup> Respondent, my observation is that the matters alleged therein, apart from being merely mentioned, no effort whatsoever has been made to substantiate them. In the circumstances, I will not belabour the same.
21. In view of the foregoing, I find the issues arising for determination in this matter to be "whether leave should be granted to the Applicants to appeal against the Ruling delivered herein on 12/05/2022 and whether stay of execution and also stay of proceedings should be granted pending the hearing and determination of the intended appeal".
22. Regarding the prayers for leave to Appeal, the Court of Appeal in the case of Rhoda Wairimu Karanja & Another -Vs- Mary Wangui Karanja & Another [2014 eKLR made the following observations as



regards filing of appeals in Succession matters against the decisions of the High Court while 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.”

23. It was therefore the correct move for the Applicants to have moved this Court for grant of leave to appeal. Needless to state, such leave will only be granted where justifiable circumstances are demonstrated such as where it is shown that there are weighty issues requiring further serious judicial interrogation by the Court of Appeal.
24. I may mention that although, as pointed out in the Grounds of Opposition, the Application filed by Messrs Chebii & Co. for the 5<sup>th</sup> and 6<sup>th</sup> Applicants, Francis Murgor and Chemutai Murgor, does not have a prayer for leave to appeal, that omission was deemed cured the moment the 3 Applications were cured and since the other 2 Applications have such prayer.
25. In this matter, I have perused the respective Memoranda of Appeal presented through the firms of Munene Micheni & Co. and by Morgan Omusundi Law Firm. Although the Application filed through Messrs Chebii & Co does not also contain a draft Memorandum of Appeal, I observe that the major ground of Appeal is that by the said Ruling, the Court dispossessed the Applicants of properties gifted to them inter vivos by the deceased before he died and that the Court reverted the properties to the estate of the deceased. There are also allegations of denial of the right to be heard and also that the Court usurped the jurisdiction of the Environment and Land Court (ELC). Appreciating that the Applicants have a right to appeal and having considered the grounds of appeal put forward, I am satisfied that the intended appeals cannot be termed as frivolous or not raising substantive points of law for consideration by the Court of Appeal. I also do not believe that the Respondents will suffer prejudice that cannot be cured if leave to appeal is granted. Section 47 of the Law of Succession Act also empowers this Court to make such orders as may be just and expedient. In the circumstances, I find no reason why the Applicants should be denied the opportunity to pursue the appeal and hereby grant the same.
26. Regarding the prayer for stay of execution, Rules 49 and 73 of the Probate and Administration Rules, read together, permit the Court to invoke its inherent jurisdiction to issue appropriate orders in order to meet the ends of justice and to prevent abuse of process. I am therefore of the view that the said provisions, read with Section 47 aforesaid, are wide enough to cover the prayer for stay of execution of a judgment or decree in Succession proceedings. In any event, it has not been denied that indeed this Court has the jurisdiction to grant the order of stay of execution pending appeal.
27. Having made the above findings, I may mention that stay of execution pending appeal is a discretionary power but, which, needless to state, must not be exercised on whims, but judiciously, on defined principles and on the basis of the facts of the case. It is also the position that the objective of stay of execution is to prevent “substantial loss” from befalling an applicant and thus to prevent the appeal from being rendered nugatory.



28. It is also trite law that an Applicant for stay of execution of a decree or order pending Appeal is required to satisfy the conditions that the Application has been made without unreasonable delay, that “substantial loss” may result to the Applicant unless the order is granted, and where applicable, that the Applicant is willing or ready to deposit security for due performance of the decree or order.
29. The first condition that I need to consider is therefore whether the Applications have been made without unreasonable delay. In this case, the Ruling the subject of the Applications was delivered on 12/05/2022. The 3 Applications were then filed on 25/05/2022, 31/05/2022 and 6/06/2022, respectively. It cannot therefore be disputed that the Applications were filed timeously and without delay.
30. The second condition is whether the application would suffer “substantial loss” should the order not be granted. As to what constitutes “substantial loss”, F. Gikonyo J in the case of James Wangalwa & Another v Agnes Naliaka Cheseto [2012] eKLR, stated as follows:

“

- “ 11. No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, ....., does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process.

The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the Applicant as the successful party in the appeal. This is what substantial loss would entail, a question that was aptly discussed in the case of Silverstein N. Chesoni [2002] 1KLR 867, and also in the case of Mukuma V Abuoga quoted above. The last case, referring to the exercise of discretion by the High Court and the Court of Appeal in the granting stay of execution, ....., emphasized the centrality of substantial loss thus:

“... the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.”

With this observation, of course, a frivolous appeal cannot in practical terms be rendered nugatory. The only admonition however, is that the High Court should not base the exercise of its discretion ..... only on the chances of the success of the appeal. Much more is needed in accordance with the test I have set out above.”

31. Further, Platt, Ag. JA (as he then was) in Kenya Shell Limited vs. Kibiru [1986] KLR, expressed himself as follows:

“..... If there is no evidence of substantial loss to the applicant, it would be a rare case when an appeal would be rendered nugatory by some other event. Substantial loss in its various forms, is the corner stone of both jurisdictions for granting a stay. That is what has to be prevented. ....”



32. On his part, Gachuhi, Ag. JA (as he then was) in the same case, stated as follows:

“..... What sort of loss would this be? In an application of this nature, the applicant should show the damage it would suffer if the order for stay is not granted. By granting a stay would mean that status quo should remain as it were before judgement. What assurance can there be of appeal succeeding? On the other hand, granting the stay would be denying a successful litigant of the fruits of his judgement.”

33. On the merits of the Appeal, I have already made a finding that the issues alluded to cannot be termed frivolous or with no chances of success.

34. However, since delivery of the Ruling, a lot has happened in this case. Various further Applications, including on contempt of Court and on execution of the orders, have been filed and determined and the Court has in the process given further orders which have significantly altered the situation that was prevailing as 12/05/2022 when the Ruling was delivered. Further, by its Ruling delivered on 15/12/2023 this Court, by implication, varied some of the orders made vide the said Ruling of 12/05/2022. This means that the appeal on some of the issues intended to be challenged may no longer even be viable. In addition, several of the beneficiaries have also in the intervening period, met their unfortunate demise.

35. In the circumstances, I find that granting stay of execution after all the developments that have taken place in this matter since 12/05/2022 will only confuse the parties, disrupt the momentum already picked up in resolving this matter and unnecessarily delay the resolution of this Cause. In any event, none of the Applicants has demonstrated any serious prejudice that they would suffer if the stay is not granted. It is 2 years since the Ruling was delivered and if the Applicants have survived the orders to date, what will now so drastically change? Even if the orders were to be enforced or executed, the Applicants have not demonstrated that the same cannot be undone or cured.

36. In the circumstances, my finding is that no “substantial loss” to be suffered by the Applicants has been demonstrated. Having found as such, consideration of the third condition - deposit of security - does not now arise.

37. Regarding stay of proceedings, it is trite law that when faced with an Application of such nature, the Court is required to exercise its discretion but which discretion must be exercised after due consideration of the merits of the case and the likely effect on the ends of justice. As usual, exercise of discretion must be grounded on judicious principles. On this issue, Hon. Justice Ringera J in *Global Tours & Travels Limited, Nairobi HC Winding Up Cause No. 43 of 2000* held as follows:

“As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of justice ..... the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is so, on what terms it should be granted. In deciding whether to order a stay, the Court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously.”



38. The requirement for the Court to judiciously exercise its discretion when considering an Application to stay proceedings was reiterated by Hon. F. Gikonyo J in the case of Christopher Ndolo Mutuku & Another vs CFC Stanbic Bank Limited (2015) eKLR in which he stated as follows:

“.....what matters in an application for stay of proceedings pending appeal is the overall impression the Court makes out of the total sum of the circumstances of each, which should arouse almost a compulsion that the proceedings should be stayed in the interest of justice...”

39. Similarly, Halsbury’s Law of England, 4<sup>th</sup> Edition, Vol. 37 page 330 and 332 gives guidelines on the threshold to be met in Applications for stay of proceedings as follows:

“The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court’s general practice is that a stay of proceedings should not be imposed unless the proceedings beyond all reasonable doubt ought not to be allowed to continue.

This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases.

It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground must show merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case.”

40. Further, in Kenya Wildlife Services v Jane Mutembi (2019) eKLR, again, Hon. Justice F. Gikonyo held that:

“stay of proceedings should not be confused with stay of execution pending appeal. Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on right of access to justice, right to be heard without delay and overall right to fair trial. Therefore, the test for stay of proceedings is high and stringent.”

41. In line with the foregoing guidelines, it is generally agreed that in an Application for grant of stay of proceedings, the matters that the Court must satisfy itself on are the following:

- a. That the applicant has established a prima facie arguable case;
- b. That the application was filed expeditiously; and
- c. That the applicant has established sufficient cause to the satisfaction of the court that it is in the interest of justice to grant the orders sought.

42. Regarding “prima facie arguable appeal”, it is settled that in Applications of this nature, an “arguable appeal” need only raise a single bona fide point worthy of consideration by the Appellate Court and that it need not be one that must necessarily succeed (see Cooperative Bank of Kenya Ltd vs Banking Insurance of Finance Union (Kenya) [2015] eKLR).

43. On whether there is an “arguable appeal”, I have already found that the intended Appeal cannot be termed frivolous and on whether the Applicants moved expeditiously, I have also found that they moved without unreasonable delay.



44. The next question is whether the Applicants have “established sufficient cause to the satisfaction of the Court that it is in the interest of justice to grant the orders sought”. Upon review of this issue, for reasons similar to those that informed this Court’s finding that the Applicants have failed to demonstrate the great prejudice or irredeemable harm that they will would suffer if the orders given on 12/05/2012 are enforced and thus, no stay of execution is granted, I also find that the Applicants have failed to establish such sufficient cause that it is in the interest of justice to grant an order staying these proceedings. Upon weighing the pros and cons of either proceeding with the matter or staying the proceedings, it is my view that it will be more beneficial to proceed with the case rather than to stay it. Stay of proceedings will only further delay the determination of this matter as the estate continues to waste away. I am not thus persuaded to stay these proceedings.
45. As aforesaid, the power to stay proceedings is one which ought to be exercised sparingly, and only in exceptional cases. In this case, my finding is that no such exceptional case has been demonstrated.

### **Final Orders**

46. In view of above, I issue orders as follows:
- i. Leave to appeal against the Ruling delivered herein on 12/05/2022 is hereby granted to the Applicants as prayed in the respective Application dated 25/05/2022 and the two further Applications both dated 30/05/2022
  - ii. The prayers for stay of execution and stay of proceedings pending the hearing and determination of the Appeal intended to be filed by the Applicants is declined.
  - iii. Costs shall be in the Cause

**DELIVERED, DATED AND SIGNED AT ELDORET THIS 24<sup>TH</sup> DAY OF MAY 2024**

.....

**WANANDA J. R. ANURO**

**JUDGE**

