



**In re Estate of Joseph Nderitu Kingori (Deceased) (Succession Cause 3 & 4 of 2017 (Consolidated)) [2025] KEHC 15953 (KLR) (4 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 15953 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
SUCCESSION CAUSE 3 & 4 OF 2017 (CONSOLIDATED)  
GL NZIOKA, J  
NOVEMBER 4, 2025**

**IN THE MATTER OF THE ESTATE OF JOSEPH NDERITU KINGORI (DECEASED)**

**BETWEEN**

**MARIANA NJERI GATHENYA ..... 1<sup>ST</sup> APPLICANT  
JEREMIAH MUTHEE NDERITU ..... 2<sup>ND</sup> APPLICANT  
JOHN MWANGI NDERITU ..... 3<sup>RD</sup> APPLICANT  
JOYCE MUGURE THUITA ..... 4<sup>TH</sup> APPLICANT**

**AND**

**GEORGE NDUNGU KIMANI ..... EXECUTOR**

**AND**

**JANE WANGARI NDERITU ..... 1<sup>ST</sup> RESPONDENT  
GEORGE MUHUHU ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. By a summons for confirmation of grant application dated 11<sup>th</sup> June 2024, brought under the provisions of section 71(2)(a) of the *Law of Succession Act* (Cap 160) Laws of Kenya (hereinafter “the Act”) and Rule 40(1) of the Probate and Administration Rules, and all other enabling provisions of law, the applicant is seeking for the following orders:-
  - a. That the Grant of Probate (with Will annexed) made to the said George Ndungu Kiman in this matter on 17<sup>th</sup> May 2024 be confirmed.
  - b. That the costs of this application be costs in the cause.



2. The summons was filed pursuant to the ruling delivered herein on 17<sup>th</sup> May 2024. Upon considering the application, the court directed that the matter be heard on 30<sup>th</sup> September 2024.
3. However, before the hearing date applicants/beneficiaries filed a chamber summons application dated 25<sup>th</sup> September 2024, brought under the provisions of section 47 of the Act and Rules 49 and 73 of the Probate and Administration Rules seeking for the following orders: -
  - a. Spent
  - b. Spent
  - c. That the hearing and the determination of the summons for confirmation of grant dated 11<sup>th</sup> June 2024 be stayed pending the hearing and determination of the intended appeal arising out of the ruling dated 17<sup>th</sup> May 2024.
  - d. That the costs of this application be provided for.
4. The application is supported by the grounds thereto and the affidavit of the even date and a further affidavit sworn by Mariana Njeri Gathenya, the 1<sup>st</sup> applicant on 24<sup>th</sup> October 2024, and on behalf and with the authority of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> applicants.
5. She avers that the applicants, being beneficiaries of the deceased, filed an application on 5<sup>th</sup> May 2022 for reasonable provisions under section 26 of the Act. However, the court in its ruling dated and delivered on 17<sup>th</sup> May 2024 declined to allow the application.
6. That being dissatisfied with the ruling, the applicants made an oral application seeking for leave to appeal and leave was granted. That, on 30<sup>th</sup> May 2024, the applicants filed a notice of appeal and subsequently on 5<sup>th</sup> October 2024, filed an appeal at the Court of Appeal; COACA No. E142 of 2024 Mariana Njeri Gathenya & others vs George Ndungu Kimani & others.
7. That the applicants have good grounds of appeal and believe that an application for reasonable provisions should be made before the confirmation of grant. That if the application for confirmation of grant is heard and determined, it will be prejudicial to them as they will suffer substantial loss, if the estate of the deceased is distributed before reasonable provision is made for them. Furthermore, the appeal will be rendered nugatory.
8. That it is only fair and just that the hearing and determination of the summons for confirmation of grant dated 11<sup>th</sup> June 2024 be stayed pending hearing and determination of the pending appeal.
9. The applicants further filed a notice of preliminary objection dated 27<sup>th</sup> September 2024, based on the following grounds: -
  - a. The summons seeks to confirm a non-existent grant.
  - b. The summons has been brought before the lapse of six (6) months since the grant was issued contrary to section 71 (1) of the *Law of Succession Act*.
10. In addition, the applicants filed an affidavits of protest sworn on 27<sup>th</sup> September 2024. In a nutshell, they aver that, the summons of confirmation application dated 11<sup>th</sup> June 2024, seeks to confirm the grant of probate purportedly issued on 17<sup>th</sup> May 2024. However, no grant was issued on 17<sup>th</sup> May 2024 but on 23<sup>rd</sup> August 2024. Furthermore, six (6) months are yet to lapse since the grant was issued and therefore the summons for confirmation application has been filed prematurely.



11. The applicant further avers that the matter HCP&A No(s). 3 of 2017 and 4 of 2017 having been consolidated with HCP&A 4 of 2017, there cannot be two (2) grants in respect to the same estate and it's is only fair that the grant in the consolidated matter be rectified, re-issued and confirmed in the names of George Ndungu Kimani and Mariana Njeri Gathenya.
12. That the applicants are opposed to the mode of distribution proposed by the Executor at paragraph 5 of his supporting affidavit as it has left out three assets of the deceased being: -
  - a. Naivasha Absa Bank account No. xxx
  - b. Motor Vehicle Registration No. KAR xxxK
  - c. 1.2 acres out of Title No. Nyandarua/Silibwet/689
13. The applicants contend the court the court stated in the ruling herein dated 17<sup>th</sup> May 2024, that the net estate of the deceased can only be resolved by way of viva voce evidence or where the Executor has obtained the grant of probate and filed an application for confirmation of grant. That thereafter the applicants can file a protest or objection proceedings. That the applicants are now seeking for reasonable provisions through the instant affidavits of protests.
14. The applicants aver that the 1<sup>st</sup> applicant Mariana Njeri Gathenya, was married to the deceased and were blessed with six (6) children namely; Joyce, Jane, Jeremiah, John, Peter and James, although Peter and James are deceased with no family or dependents.
15. That the deceased did not provide for the widow in his will as evidenced by paragraph H of the Will which stated that she will live with the 2<sup>nd</sup> respondent, Jane Wangari Nderitu, on L.R 1144/684 Maryland Complex (hereinafter referred to as Maryland Complex”) who will take care of her. That the Will does not indicate that she had a lifetime interest over the property contrary to the averments by the Executor/1<sup>st</sup> respondent.
16. That the 1<sup>st</sup> applicant’s matrimonial home with the deceased was situated on the 1<sup>st</sup> floor of Maryland Complex and that she is not willing to be accommodated by any of her children in the properties she assisted to acquire. Furthermore, the 1<sup>st</sup> applicant Mariana and the 2<sup>nd</sup> respondent Jane do not talk and therefore not she is not willing to live with the 2<sup>nd</sup> respondent. Moreover, the 2<sup>nd</sup> respondent indicated in her supplementary affidavit dated 13<sup>th</sup> February 2023, that she has no intention of sharing her inheritance with the 1<sup>st</sup> applicant.
17. The 2<sup>nd</sup> and 3<sup>rd</sup> applicants Jeremiah and John acknowledged that, they were bequeathed properties under the Will, but argued that the subject properties are under-developed, do not generate any income and are occupied by strangers. That, they are married with children and get an income Kshs. 12,000 from selling second hand clothes which is inadequate to maintain them.
18. The applicants further argued that, the deceased bequeathed the 4<sup>th</sup> respondent Joyce the Jos-Marion a house situated on Plot No. Naivasha Block 2/281, but the house was demolished by the Government in the year 2010 as such the bequeath has failed. Further, the other property Nyandarua/Silibwet/607 valued at Kshs. 1,500,000 is undeveloped.
19. That, she is a widow following the death of her husband in the year 2010 and has four children with the last born being in secondary school. Furthermore, after moving out of the subject premises, she is stay in rented room at Inyaa trading Centre. The applicants aver that, they had a good relationship with the deceased but they were not adequately provided for in the Will.



20. The applicants argued that the total value of the estate of the deceased is Kshs. 197,000,000 but the 1<sup>st</sup> applicant has not been bequeathed any property from the estate of the deceased, while the 2<sup>nd</sup> and 3<sup>rd</sup> applicants have each been bequeathed property worth Kshs. 17,171,148.40 and the 4<sup>th</sup> applicant bequeathed property valued at Kshs. 1,500,000.
21. That on the other hand the 2<sup>nd</sup> respondent has been bequeathed property valued at Kshs. 169,145,915.50 that are developed and earn a monthly income of Kshs. 400,000. Furthermore, the 3<sup>rd</sup> respondent has been bequeathed undeveloped property worth Kshs. 24,000,000. Made a proposal on how the deceased property should be re-distributed and include the properties excluded by the Will.
22. However, the executor/1<sup>st</sup> respondent opposed the applicants summons application dated 25<sup>th</sup> September 2024 vide a grounds of opposition dated 28<sup>th</sup> October 2024 which state as follows: -
  - a. The summons are fatally defective and an abuse of the court process.
  - b. The summons are res judicata, the court having heard and determined the validity of the will and the distribution of the Estate vide the court's ruling dated 17<sup>th</sup> November 2022.
  - c. Order 42 Rule 6 of the Civil Procedure Rules provides that no appeal shall operate as a stay of proceedings or order appealed from except in so far as the court appealed from may order.
  - d. The applicants are thus not entitled to the orders sought and the summons dated 25<sup>th</sup> September 2024 should be dismissed with costs to the executor/respondent.
23. The 2<sup>nd</sup> respondent also opposed to chamber application and the affidavits of protests vide three (3) replying affidavit(s) dated 27<sup>th</sup> September 2024, 1<sup>st</sup> October 2024 which was amended on 29<sup>th</sup> October 2024, and the affidavit of 29<sup>th</sup> October 2024.
24. In a nutshell she avers that, that the summons application dated 25<sup>th</sup> September 2024 lacks legal basis and merit. That the Act does not envisage provision for the court to entertain applications seeking to stay the hearing and determination of summons for confirmation of grant.
25. That the court has no jurisdiction to evaluate the merits of the applicants' memorandum of appeal as it would amount to usurping the powers of the Court of Appeal and therefore the application can only be heard by the Court of Appeal in accordance with Rule 5 (2) (b) of the Court of Appeal Rules, 2022.
26. Further, that the application is an attempt by applicants to delay the court from confirming the grant with the aim of illegally collecting monthly rent from Maryland Complex.
27. With regards to the notice of Preliminary Objection dated 27<sup>th</sup> September 2024, the 2<sup>nd</sup> respondent admits that the grant of probate of written Will issued by the court is dated 23<sup>rd</sup> August 2024, but argues that the summons of confirmation dated 11<sup>th</sup> June 2024 was an error on the executor's part which error the court may amend in line with section 100 of the *Civil Procedure Act* (Cap 21) Laws of Kenya.
28. The 2<sup>nd</sup> respondent further argues that section 71 (1) of the Act provides that the court may confirm a grant of execution at the expiry of six (6) months or any shorter period as the court may direct. That the averments by the applicants that six (6) months are yet to lapse since the grant of probate was issued have no merit.
29. The 2<sup>nd</sup> respondent in response to the affidavits of protests by the applicants avers that, the court in its ruling delivered on 17<sup>th</sup> November 2022 affirmed that the Will dated 6<sup>th</sup> March 2008 is valid and



- was admitted to probate. That the applicants have never appealed against the said ruling and cannot therefore be heard to object the summons for confirmation of grant filed by the Executor.
30. Further the issues of unreasonableness of the provisions to the applicants was already dealt with by the court in its rulings dated 17<sup>th</sup> November 2022 and 17<sup>th</sup> May 2024 with the court in its latter ruling ordering the Executor to carry out his mandate of distributing the estate. That the issue unreasonable provision having been dealt with the court became functus officio. That the law forbids the court from overturning its decision and cannot therefore entertain the matter as it would amount to sitting on appeal of its own decision.
  31. Furthermore, the Will having been declared valid, the estate of the deceased cannot then be administered and/or distributed in as an intestate estate as proposed by the applicants. That the mode of distribution as proposed by the applicants is tantamount to stepping into the shoes of the deceased and substituting the Will with the own thought of what the deceased ought to have done.
  32. That a testator has the sole prerogative to choose how to distribute his property among his beneficiaries whether equally, unequally or not to leave any bequests. That the law only requires that no beneficiary is left destitute. However, it is evident from the Will that all the deceased's beneficiaries were provided for.
  33. That in addition, the only equitable way to distribute the properties of the deceased that were left out in the Will as tabulated in the affidavits of protest is to be done in accordance with the rules of intestacy.
  34. The 2<sup>nd</sup> respondent argued that the applicants in opposing the summons for confirmation application, must establish that the proceedings to obtain the summons for confirmation of grant are; defective in substance; the grant was obtained fraudulently by making of a false statement or concealment of a material fact, or obtained by means of untrue allegations of facts essential in point of law. However, none of the afore grounds have been established in the applicants' affidavits of protest.
  35. The 2<sup>nd</sup> respondent in a further affidavit dated 29<sup>th</sup> October 2024 averred that agent tasked with the mandate to manage the estate of the deceased passed away in October 2024. That he was the sole director/shareholder of Skylink Commercial Agency Limited and that the company had no company secretary. As such he was the only one who could call for a meeting and pass a resolution for the management of Maryland Complex.
  36. That the agent having passed on the order of the court dated 6<sup>th</sup> October 2017, requiring the agent to deposit all rents and profits into the approved bank account and to render accounts every six (6) months, and the order dated 17<sup>th</sup> May 2024, ordering the agent to provide a true and accurate audited accounts to the Hon. Deputy Registrar within twenty- one (21) days are moot.
  37. Be that as it were, the court directed that the applications and preliminary objection be canvassed vide filing of written submissions. The applicants filed submissions dated 6<sup>th</sup> February 2025, in relation to the summons application dated 25<sup>th</sup> September 2025 where they concede that there is no specific provision in the Act or the Probate and Administration rules that provides for stay of proceedings.
  38. However, the argue that section 47 of the Act grants the court powers "to entertain any application and determine any dispute" and make expedient orders, while Rule 73 saves the "inherent powers and/ or jurisdiction of the court to make such orders as may be necessary for the end of justice.
  39. In support of their argument the applicants have relied on the case of Floris Piero & Midland Company Limited -vrs- Giancarlo Falasconi [2014] KECA 827 (KLR), where the Court of Appeal stated that section 47 of the Act as read with Rule 73 of the Probate and Administration Rules gives the court all-



- embracing powers to make necessary orders including injunctions where appropriate to safeguard the deceased's estate and to meet the ends of justice or prevent an abuse of the court process.
40. The applicants further rely on the case of, Zubheir Abdalla -V- Yussuf Juma [2017] KEHC 799 KLR where the High Court stated that it has inherent power and/or jurisdiction to grant stay of execution under Section 47 of the Act and Rule 73 of the Rules, notwithstanding the fact that Order 42 of the Civil Procedure Rules is not one of the orders imported by Rule 63(1) of the Probate and Administration Rules.
  41. The applicant also referred the court to the case of In re-Estate of Benson Muriungi (Deceased) [2017] KEHC 5186 (KLR), where the High Court stated that it has very wide powers under section 47 of the Act to issues order including injunctions on matters touching on the estate of a deceased person, and that the court can resort to its inherent power in Rule 73 to preserve an estate through an injunction.
  42. In addition, the applicants rely on the case of; In re Estate of Charles Mwaniki Kamara (deceased) [2022] KEHC 12464 KLR where the High Court stated that it can entertain any application of whatever nature under section 47 and Rule 73 and grant any orders for the sake of justice.;
  43. On whether the court should grant the orders sought in the summons application, the applicants submit that section 30 of the Act limits the time to bring an application for reasonable provision under Part III (sections 26 to 30) of the Act before confirmation of the grant. That the rationale is that the estate is distributed at confirmation, after which there is no estate from which a reasonable provision can be made.
  44. That they filed an application for reasonable provision under section 26 of the Act; however, the same was declined and they have appealed against that ruling. That if the application is not allowed, their pending appeal will be rendered nugatory as there will be no estate left if their appeal succeeds and they will suffer substantial loss.
  45. The applicants refer the court to the case of, In re Estate of Kithumbu Nyagah Elijah (deceased) [2021] KE HC 8978 (KLR), where the court stayed filing of summons for confirmation of grant on the ground that there was a pending appeal before the Court of Appeal and stated that it had a duty to protect the estate of the deceased pending appeal.
  46. Further, reliance was placed on the case of In re Estate of Nyoro Julia Nguhi Wanjiru (Deceased) [2023] KEHC 26106 (KLR) where the High Court granted stay on the ground that the applicant appeal would be a mere academic exercise as the petitioner would move to confirm the grant and distribute the estate.
  47. The applicants submit that the court in its ruling of 17<sup>th</sup> May 2024, held that the applicants can make a claim for reasonable provision vide an affidavit of protest which is one of the grounds of appeal in their pending appeal. They cited William Musyoka Law of Succession 2<sup>nd</sup> Edition page 331 -337 where it is opined that a protest rides on a confirmation application, and that an objection should relate to the terms of the Will or intestacy laws under Section 71(2) the Act.
  48. On the preliminary objection, the applicants filed submissions dated 19<sup>th</sup> February 2025, where they relied on the case of Mukisa Biscuit manufacturing Co Ltd- v- West End Distributors Ltd (1969) E.A 696, 700 on what constitutes a preliminary objection which raises a pure point of law,
  49. The applicants submit that section 71(3) of the Act permits the court to confirm the grant before the expiry of six (6) months if it is satisfied that; there is no dependant or that the only dependants are of full age and consent to the application and that it would be expedient in all the circumstances of the case so to direct.



50. The applicants argue that the summons of confirmation application has not met the legal requirements under the afore section as there is no prayer for early confirmation of the grant in the impugned application. Secondly, that none of the dependents have given their consent nor has any consent being attached as required under section 71(3)(a) of the Act. Thirdly, that the application is seeking to confirm a non-existent grant. That there is no grant of probate that was made on 17<sup>th</sup> May 2024 and that the actual grant was issued on 23<sup>rd</sup> August 2024.
51. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents also filed submissions dated 12<sup>th</sup> February 2025 on the summons application dated 25<sup>th</sup> September 2025 and preliminary objection. On the preliminary objection, they argue that it does not raise a pure point of law as determined in *Mukisa Biscuit Manufacturing Co Limited v West End* {1969} 1EA. That the applicants' claim that the summons for confirmation was filed prematurely is erroneous, as Section 71(3) of the Act allows for shorter durations as the court may direct. They further submitted that the error in the grant's date was a correctable error under Section 47 of the Act.
52. On the summons application dated 25<sup>th</sup> September 2025 seeking stay of proceedings, the 2<sup>nd</sup> and 3<sup>rd</sup> respondents argue that the court lacks jurisdiction to hear the same as an appeal has been filed to the Court of Appeal. That the applicants should have applied to the Court of Appeal under Rule 5(2) (b) of the Court of Appeal Rules. Furthermore, that the court became functus officio after the court ordered the Executor to distribute the Estate.
53. That the court cannot sit on appeal of its own decision and determine the merits of the intended appeal, which is the preserve of the Court of Appeal. They rely on the case of *Estate of Luke Owuor Ochido (Deceased)* (Probate & Administration E015 of 2021) where the High Court stated that it would refrain from discussing the merits of an intended appeal as such merits shall be discussed during the hearing of the intended appeal. Further reliance is placed on the case of; *Miscellaneous Succession No. 205 of 2015 In the Matter of the Estate of Kithumbi Nyaga Elijah* where the High Court stated that stay of proceedings orders were untenable.
54. The respondents submit that the deceased's will was declared valid and admitted to probate by the court on 17<sup>th</sup> November 2022 and that the applicants have never appealed against the ruling. That a pending appeal on reasonable provision cannot impede the confirmation of a valid Will and cited Section 5 of the Act and the Court of Appeal in; *John Wagura Ikiki v Lee Gathigia Muthoga* Civil Appeal No 196 and 197 of 2009 where it held that it had no power to vary the testamentary wishes of a deceased person.
55. The respondents further cited the case of; *Popat v Popat & 3 Others* Civil Appeal No E 090 OF 2020 KECA 106 where the Court of Appeal stated that it cannot interfere with testamentary freedom of a deceased unless it is shown the deceased deliberately disinherited a dependent.
56. That furthermore in the case of; *Sisilia Mwikali Kirwa v H C & another* [2015] eKLR, the Court of Appeal stated that a testate estate cannot be distributed as an intestate one, while in the case of; *Ndirangu v Ndirangu* (Civil Appeal 141 of 2019) the Court of Appeal held that where a deceased left a valid Will and intestate property, the properties in the will would be distributed as per the Will and the intestate property distributed as per the provisions of section 38 of the Act.
57. The respondents further submitted that the applicants have failed to demonstrate substantial loss. That Order 42(6) of the Civil Procedure Rules was inapplicable in probate proceedings. The case of, *Mukuma v Abuoga* [1988] and *Estate of Charles Mwaniki Kamara in Succession Cause 533 of 2012*, was relied on, to argue that failure to prove substantial loss is fatal to the application.



58. That the confirmation of a valid grant is a "lawful process" and does not constitute substantial loss. Furthermore, the applicants are beneficiaries under the Will as such it is unclear what loss they will suffer.
59. Finally, the 2<sup>nd</sup> and 3<sup>rd</sup> respondents argued that the applicants are attempting to "re-litigate" matters that are Res adjudicata and delaying the distribution while allegedly collecting rent from Maryland Plaza. The court was urged to dismiss the Summons and the Preliminary Objection and to confirm the Grant dated 11<sup>th</sup> June 2024.
60. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents further filed submissions dated 28<sup>th</sup> March 2025 on the affidavits in protest and argued that it should be dismissed with costs. That the affidavits seek specific distribution of certain properties which is illegal as the deceased Will dated 6<sup>th</sup> March 2008 was declared valid by the court in its ruling dated 17<sup>th</sup> November 2022.
61. That in the text book "Law of Succession", Second Edition (2022) Pages 334-336 states that in testate proceedings, an objection to distribution must be based on grounds that the proposal does not conform with the terms of the Will. That the applicants' claim for reasonable provision was already dismissed by the Court in a ruling dated 17<sup>th</sup> May, 2024 and therefore the court is functus officio on this issue. That hearing the protest on this matter would be akin to this Honourable Court sitting on an appeal of its own prior ruling.
62. The respondents submit that the 1<sup>st</sup> applicant's averment that the Will made no provision for her, is a blatant lie and argues that clause H of the will, makes provision for her to live with the 2<sup>nd</sup> respondent. Further, that the proposal of a life interest share for the 1<sup>st</sup> applicant only applies to intestacy, not testate proceedings.
63. The respondents reiterated the principle of testamentary freedom and cited Civil Appeal No. 196 and 197 of 2009 Between John Wagura Ikiki and Lee Gathigia Muthoga and Ndirangu vs Ndirangu Civil Appeal 141 of 2019 (Supra).
64. The respondent submitted that as regard the 1.2 acres of Nyandarua/Silibwet/689 previously bequeathed to Peter Kironji (now deceased with no beneficiaries), the portion should be distributed as per the Rules of Intestacy under Part V in particular, Section 35 of the Act. Further the 1<sup>st</sup> applicant is not an executor and cannot be issued a Grant of Probate.
65. The executor/1<sup>st</sup> respondent did not file any submissions.
66. At the conclusion of arguments by the parties on the subject matters herein, I find that three (3) issues have arisen for determination as follows:
  - a. Whether there is a valid, competent and/or proper application for confirmation of grant.
  - b. If there is a valid application for confirmation of grant whether it should be heard before the intended appeal.
  - c. Whether the court should grant a stay of confirmation of grant as prayed.
67. The arguments on the first issue have already been stated afore and having considered the same and perused the court file, I find that the grant herein was issued on 23<sup>rd</sup> August 2024 and not 17<sup>th</sup> May 2024, as stated in the application for confirmation of the grant. This fact is conceded to by the 2<sup>nd</sup> and 3<sup>rd</sup> respondents who state that there is an error by the executor. So if the court were to allow the application as it is, then the court will be allowing and confirming a grant that doesn't exist.



68. Furthermore, as already stated the grant was issued on 23rd August 2024, while the summons for confirmation of grant is dated on 11<sup>th</sup> June 2024 and it is clear from CTS that it was filed on 3<sup>rd</sup> September, 2024. Be that as it were, it is not in dispute that the summons for confirmation of grant was filed before expiry of six (6) months. In that regard, section 71 of the Act, which outlines instances where a party can move the court for hearing of an application for confirmation before the six (6) months have not been complied with and there is no prayer to confirm the grant before expiry of six (6) months.
69. In resolving the first issue to finality, I find that the applicant has not adduced any proper grounds for the filing of the application before the expiry of six (6) months. It is the court's considered opinion that, after this court rendered its decision allowing the executor to do that which he is supposed to do, a fresh application should have been.
70. In the alternative the subject application should have been amendment in terms the date of the grant and date of the application for it cannot have been filed before grant was issued. It therefore follows that it is not tenable for the court hear this summons for confirmation of the grant as it is at this stage.
71. The results of the afore is to the advantage of the party who seeks for stay thereof. That said, the next issue is whether the court should go ahead and stay the orders in the impugned ruling. The arguments for and against it have already been stated herein and I concur that the court became functus officio upon delivering the ruling and under normal circumstance it will not entertain any further proceedings. Furthermore, there are no provisions in law granting this court the power to stay the subject orders.
72. However, I entirely concur with the arguments herein that, the court has been power under Section 47 of the Act, Rule 73 of the Administration and Probate Rules and Section 3 of the Civil Procedure Act to ensure that justice is done. The court is further alive to Article 159 of the Constitution of Kenya that implores the court to administer substantive justice prevails and the inherent power to make sure that justice is done and seem to be done.
73. Consequently, it is the considered opinion of the court that if stay is not granted the appeal may be rendered nugatory. However, the court holds further view that whatever period of stay is granted, it should be limited. This is informed by the fact that if the court was to give an indefinite period of stay, it would be basically reversing its own orders. Furthermore, the Court of Appeal that will hear the appeal is well placed to hear the application for stay and issue the appropriate orders.
74. Pursuant to the aforesaid the court makes the following orders: -
- a. The court grants the applicants a limited period of fourteen (14) days to move to the Court of Appeal and seek for the stay.
  - b. To balance the scale of justice, the executor is granted seven (7) days to do what is necessary so that if there is no stay granted after fourteen (14) days, there is an summons for confirmation of grant to be considered.
75. However, before I pen off, I observed that the parties, have delved a lot into matter of provision for dependants, uneven distribution of properties, whether a person qualifies to be a dependent, whether a beneficiary has been provided for otherwise, or the validity or otherwise of the Will and yet some of these matter were determined in ruling herein. The court will nor delve back into those issues already dealt with and I think some of those issues will rightly be matters of appeal.
76. The court makes no order as to costs.



**DATED DELIVERED AND SIGNED THIS 4<sup>TH</sup> NOVEMBER 2025.**

**GRACE L. NZIOKA**

**JUDGE**

In the presence of:

Mr. Mutonyi for the Applicants

Mr. Wairegi for the Executor/1<sup>st</sup> Respondent

Ms. Koki Muli for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents

Ms. Hannah: Court Assistant

