

Fresh from the bench

Unpacking some of the recent Court of Appeal Decisions

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Legal Digest

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**KARANJA
NJENGA**
ADVOCATES

30⁺
YEARS

Dadhialla v Chaudri – (Sued as Executor of the Estate of Gurdip Kaur Sagoo) & 2 others [2025] KLR

Claim for Reasonable Provision by Excluded Daughter in Testate Estate

Brief Facts

- Harvinder Kaur Dadhialla was the biological daughter of the deceased Gurdip Kaur Sagoo.
- Gurdip's will excluded her daughter and did not state any reason for this exclusion.
- The estate (valued at Kshs. 750 million) was left entirely to daughters-in-law (2nd and 3rd respondents).
- Harvinder filed for reasonable provision under Section 26 of the Law of Succession Act, citing her status as a dependent.
- The High Court dismissed her claim, citing among other things that:
 1. She had been gifted £200,000 by the deceased.
 2. She had not demonstrated financial need.
 3. Her mother's will, which excluded her, was used to explain why Gurdip did the same.

Issues Arising

The Court of Appeal framed the issues as:

- Did the High Court exercise its discretion under Section 26 of the Law of Succession Act correctly in declining to provide for Harvinder as a dependent?
- If not, what would constitute a "reasonable provision" for Harvinder from her late mother's estate?


Findings of the Court

✓ **On Discretion and Dependency:**

- Harvinder qualified as a dependent under Section 29(a) of the Law of Succession Act as a biological child.
- While testamentary freedom exists under Section 5 of the Act, it must not be used to hurt those the deceased had responsibility for during their lifetime.
- The High Court erred by relying too heavily on the late mother's will and reasons to justify Harvinder's exclusion from her mother's estate.
- Gurdip's will was silent on the reasons for Harvinder's exclusion, and the Court emphasized that each will stands on its own.

✓ **On Reasonable Provision:**

- The Court acknowledged that Harvinder had not adequately detailed her financial situation, but also noted that no evidence contradicted her claim of being financially dependent on her husband.
- The £200,000 gift (approximately Kshs. 20 million) given inter vivos was not enough given the estimated estate value of Kshs. 750 million.
- The Court found that Harvinder's exclusion was not justified, and the estate was large enough to accommodate her without disrupting the will's structure.



Cape Holdings Limited (Under Administration) v Synergy Industrial Credit Limited & 2 others [2025] KECA 738 (KLR)

The test for Stay of orders pending an Appeal

Background:

- Cape Holdings Limited was placed under administration due to financial distress.
- A dispute arose from a contractual relationship involving real estate development and financing between Cape Holdings and Synergy Industrial Credit Limited.
- The disagreement was initially subjected to arbitration. The arbitral award favored Synergy Industrial Credit Limited.
- Cape Holdings challenged the arbitral award before the High Court, seeking to have it set aside.
- The High Court dismissed the application and upheld the arbitral award.
- Cape Holdings appealed that decision to the Court of Appeal.

Application Before the Court of Appeal:

The case before the Court of Appeal involved two consolidated applications:

- Civil Application No. E967 of 2024: Application by Cape Holdings seeking stay of execution of the High Court decision and the arbitral award.
- Civil Application No. E700 of 2024: An application related to the appeal process (e.g., extension of time or leave to appeal—exact details not provided in the facts but typically procedural).

Key Legal Issues:

- Whether a stay of execution should be granted pending the hearing and determination of the appeal.
- Whether the intended appeal had arguable points.
- Whether the appeal would be rendered nugatory if stay was not granted.

Position of the Court

The Legal Framework: Rule 5(2)(b) of the Court of Appeal Rules

Under Rule 5(2)(b), an applicant seeking interim relief pending appeal (such as a stay of execution, injunction, or similar orders) must satisfy two conjunctive conditions:

- **Arguability** – The applicant must show that the appeal is not frivolous and raises at least one bona fide issue deserving judicial consideration.
- **Nugatoriness** – The applicant must also show that if the order is not granted, the appeal will be rendered nugatory, i.e., worthless, academic, or ineffective.

✦ The Orders Sought by the Applicants

The applicants sought a variety of interim orders, including:

- Stay of execution of the High Court orders.
- An order of status quo ante, which would have the effect of reinstating the administrators of Cape Holdings.
- Referral of the matter to mediation.
- Orders for valuation and sale of the suit property pending appeal.

✿ How the Court Addressed Arguability

The Court accepted that the appeals were arguable:

- It emphasized that arguability does not mean likelihood of success but only that the appeal raises non-trivial, serious legal issues.
- Upon reviewing the memoranda of appeal, the Court found at least one bona fide issue that warranted appellate scrutiny.

Finding: The first condition under Rule 5(2)(b) was met. ✓

✿ How the Court Addressed Nugatoriness

Here, the applicants failed to meet the second limb.

a) Stay of Execution:

- The Court found that execution had already been completed as early as January 2022 via registration of a prohibitory order under Order 22 Rule 48 of the Civil Procedure Rules.
- Since execution was complete, no ongoing process existed to be stayed.
- Thus, the appeal could not be rendered nugatory in this context because the subject matter was no longer pending execution.

Conclusion: The relief sought (stay) was not available because the act complained of (execution) had already occurred. Therefore, the appeal would not be rendered nugatory by denial of the stay.

b) Status Quo Ante:

- The applicants sought to reinstate administrators whose term had already expired by statute (Section 593 of the Insolvency Act).
- Granting such an order would amount to extending the tenure of administrators without statutory basis.
- Moreover, such an order would usurp the High Court's jurisdiction, especially in matters of insolvency administration.

Conclusion: Not only was the order unavailable, but granting it would raise jurisdictional and statutory barriers. The request was also incompatible with the principle of nugatoriness because the administrators' removal had already occurred, and the corporate debtor (Cape Holdings) was now a going concern.

c) Referral to Mediation and Valuation/Sale Orders:

- These were held to be outside the scope of Rule 5(2)(b), which only allows for stay or injunction.
- Orders for valuation and sale or mediation involve substantive adjudication, not interim preservation.

Conclusion: Since such orders were not legally grantable under the rule invoked, the issue of nugatoriness was irrelevant to them.

📄 Final Holding :

Whereas the applicants had established that their appeals are arguable, they had fallen short of establishing that the appeals would be rendered nugatory should the orders sought be declined. As a result, the Court dismissed the consolidated applications with costs to Synergy Industrial Credit Ltd.

Musoma v Musoma; Musavwa (Interested Party) [2025] KECA 737 (KLR)

50:50 distribution of matrimonial property upon divorce

FACTS

1. Marriage and Divorce:

- Mary Igandu Musoma (appellant) and Francis M'mata Musoma (respondent) married under customary law around 1985 and formalized the marriage in 1996.
- They had four children.
- The marriage was dissolved on 4th April 2014.

2. Claim on Matrimonial Property:

- The appellant filed an originating summons under the Matrimonial Property Act in 2015.
- She claimed the couple jointly acquired several properties during the marriage, including land parcels, plots, a motor vehicle, and shares in companies.

3. Appellant's Contribution:

- Claimed both financial (loans, purchase of materials, payment of labor) and non-financial contributions (childcare, supervision of construction).
- Presented documentary evidence (bank records, receipts, salary deductions).

4. Respondent's Position:

- Denied joint ownership of most properties.
- Claimed he acquired many properties either before the marriage, through gifts, or individually.

- Argued the appellant owned separate properties she did not disclose.
- Opposed the distribution of some properties and claimed that some were already sold.

5. Trial Court's Findings:

- Recognized that the appellant made both financial and non-financial contributions.
- Found some of the disputed properties to be matrimonial and divided them accordingly.
- Kayole Plot C1-401 was awarded solely to the respondent despite being found matrimonial.
- The appellant appealed, challenging only the award of Kayole Plot C1-401.

Issues in dispute

- Whether the properties listed by the appellant were matrimonial properties.
- Whether the appellant made substantial contributions (financial and non-financial) toward the acquisition of matrimonial property.
- Whether the trial court erred in its distribution of matrimonial property in Kayole.
- Whether "equal rights" under Article 45(3) of the Constitution entitle a party to 50% of

matrimonial property by default.

- Whether the trial court failed to properly value or account for all matrimonial assets before distribution.

✓ **ADDITIONAL FACTS (Specific to Kayole Plot C1-401)**

1. The trial court had already found that Kayole Plot C1-401 was matrimonial property.
2. The respondent tried to claim there was a separate legal dispute over the property (double allocation), but produced no evidence (no pleadings) to support this.
3. The appellant produced a sale agreement with the former City Council of Nairobi, indicating legitimate acquisition.
4. The appellant also provided receipts and electricity bills to support her claim of contribution.
5. The respondent alleged theft of documents by the appellant but offered no proof, such as a police report.
6. The trial court nevertheless awarded the entire property to the respondent.

Main issue for determination

- Whether the trial court erred by awarding the whole of Kayole Plot C1-401 to the respondent despite finding it to be matrimonial property.

Finding of the Court of Appeal

The court began by affirming the trial court's finding that the plot was indeed matrimonial property. This categorization was not in contention during the appeal. While the respondent attempted to discredit this finding by alleging a separate ownership dispute involving double allocation, he failed to provide any pleadings or documentary evidence to support this claim.


Conversely, the appellant presented a valid sale agreement with the former City Council of Nairobi, which formed part of the documentary proof confirming legitimate ownership and the property's matrimonial nature.

Having established the property's status, the court turned to the Matrimonial Property Act, specifically Section 7, which provides that ownership of matrimonial property upon dissolution of marriage is to be divided based on each spouse's contribution. Contribution, as defined under Section 2 of the Act, includes both monetary and non-monetary input, such as domestic work, childcare, companionship, and management of the matrimonial home or family property.

The appellant, in this case, provided electricity bills and receipts for building materials, which the court viewed as documentary evidence of direct and indirect contribution. Although she did not quantify her input precisely, the court held that her evidence established "substantial contribution" to the acquisition and development of the property.

A key pillar in the Court of Appeal's reasoning was the interpretation of Article 45(3) of the Constitution, which guarantees equal rights at the dissolution of marriage. However, as the court highlighted, equality under Article 45(3) does not automatically translate into a 50:50 split of property.

Referring extensively to the Supreme Court's decision in **JOO v MBO**, the Court emphasized that equality is not mathematical, but rather contextual — it must be anchored in fairness and actual contribution. The Supreme Court in **JOO v MBO** made it clear that a party's entitlement depends on what they contributed, directly or indirectly, and courts must resist the temptation to impose a mechanical division of matrimonial property based solely on the fact of marriage.



The appellate court took judicial notice of this principle and emphasized that indirect contributions, such as enabling the respondent to work or earn by maintaining the home and caring for the family, hold equal legal value. This is especially important in situations where such domestic roles were not only necessary but also critical to the family's financial stability and property acquisition.

The respondent's counterclaim — that the appellant had stolen receipts — was dismissed for lack of proof, and no police report had been filed to substantiate the accusation. Hence, the court found that the appellant's contribution, though not numerically quantified, was real, tangible, and deserving of recognition.

Ultimately, the court concluded that fairness under the law required an equal apportionment of the property, not because of an automatic 50:50 rule, but because the facts and the appellant's contribution — both financial and non-financial — warranted it. The Court set aside the trial court's order and replaced it with a directive that the Kayole property be valued and divided equally, with each party bearing valuation costs.

Thus, the 50:50 division was not doctrinally presumed, but rather judicially justified on the basis of contribution, fairness, and the evolving constitutional understanding of equality in matrimonial disputes.