



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of Johana Keya Kikuyu (Deceased) (Succession Cause 109 of 2021) [2023] KEHC 3880 (KLR) (28 April 2023) (Ruling)

Neutral citation: [2023] KEHC 3880 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
SUCCESSION CAUSE 109 OF 2021
WM MUSYOKA, J
APRIL 28, 2023
(FORMERLY KAKAMEGA HCSC NO. 412 OF 2012)
IN THE MATTER OF THE ESTATE OF JOHANA KEYA KIKUYU (DECEASED)**

RULING

1. I delivered a judgment herein on 3rd July 2020, on validity of a will.
2. One of the beneficiaries of the will or survivors of the deceased, namely Phinias Ilatsia Kenya, was dissatisfied, and lodged herein a notice of appeal, dated 13th July 2020, on even date. That notice of appeal was amended on 16th July 2020.
3. What I am now called upon to do is to determine the Motion that Phinias Ilatsia Keya, who I suppose is the same person as Phinias Ilatsia Kenya, filed herein, dated 13th August 2020, on 9th October 2020, seeking stay of execution of the judgment of 3rd July 2020, pending appeal.
4. Grounds of opposition, dated 14th June 2021, were filed herein, by the 2nd respondent, Samuel Jamhuri Keya, on 21st October 2021, essentially stating that the application was not well founded, and that he would suffer irreparable loss and damage.
5. Directions were given on 16th June 2021, for the canvassing of the appeal by way of written submissions. Both sides complied with those directions, by filing their respective written submissions. I have read through the said written submissions, and noted the arguments made.
6. Phinias Ilatsia Kenya, the applicant, has filed a notice of appeal. He is aggrieved by my judgment of 3rd July 2020. He is within his rights to seek opinion of a higher court. It is only right that the judgment should not be executed, if it is at all capable of such execution, before his appeal is heard and determined.
7. Consequently, I shall allow the application, dated 13th August 2020, for whatever it is worth, so that execution of the said judgment is stayed pending appeal. These orders should lapse automatically, should no appeal be filed within the next 6 months.



**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA ON THIS 28TH DAY
OF APRIL 2023**

WM MUSYOKA

JUDGE

Erick Zalo, Court Assistant.

Appearances

Mr. Ashioya, instructed by Ashioya & Company, Advocates for Phinias Ilatsia Kenya, the applicant.

Mr. Mukabi, instructed by Mukabi & Company, Advocates for Samuel Jamhuri Keya, the 2nd respondent.

