



In re Estate of Christopher Geoffrey Onzele Indure (Deceased) (Probate & Administration 367 of 2011) [2023] KEHC 3975 (KLR) (27 April 2023) (Ruling)

Neutral citation: [2023] KEHC 3975 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
PROBATE & ADMINISTRATION 367 OF 2011**

REA OUGO, J

APRIL 27, 2023

BETWEEN

AGNES JEPNGETICH ONZELE INDURE 1ST PETITIONER

KENNEDY KIDIAVAI INDURE 2ND PETITIONER

AND

VICTORIA NALIAKA WANYAMA OBJECTOR

RULING

1. Vide a Notice of Motion dated the 4.6.2022 the 1st Petitioner/applicant seeks to have a stay of execution/proceedings pending the hearing and determination of Civil Appeal No 18 of 2022. The applicant has filed an appeal in the Court of Appeal Kisumu Appeal No 18/22 and is challenging the decree/ruling delivered on the 16.11.2021
2. In her supporting affidavit to the motion, she avers that she has preferred an appeal against the Ruling dated November 16, 2021. She has filed her appeal on time and that the appeal has high chances of success. That no prejudice will be occasioned to the Respondent if the orders sought and that if the orders are not granted at this stage the appeal will be rendered an academic exercise.
3. The application was opposed. The Respondent averred that the applicant has taken 7 months to file the application. That the appeal is a cropper with no chances of success and that there is nothing capable of being stayed as the court merely directed the petitioner/applicant to file a summons for confirmation of grant and she was included as a dependent to the estate of the deceased.
4. In a supplementary affidavit the applicant avers that after the delivery of judgment she filed a Notice of appeal and that the appeal has high chances of appeal in the Court of Appeal. That she is ready to abide by any order that the court will impose.



5. The application was canvassed by way of oral submission. I have considered the said submissions together with the cases relied on by the applicant and respondent respectively, *HGE v SM* Civil Appeal No 20/2020 and Civil Appeal (Application) No 93 of 2018.
6. An applicant seeking a stay of execution has to satisfy the conditions set out in Order 42 Rule 6 (2) *CPC*; that substantial loss may result to the applicant unless the order is made, that the application has been made without unreasonable delay and such security as the court orders for the due performance of such decree or order as may be ordered by the court. The court's power to grant or refuse the stay is discretionary (see *Butt v Rent Restriction Tribunal* [1979] eKLR).
7. I have considered the affidavits filed by the applicant and the oral submissions. The impugned ruling as delivered on the November 16, 2021. The application was filed about 8 months later. The delay of 8 months has not explained by the applicant. On the 2nd limb whether the applicant will suffer substantial loss. The appellant claims that she will suffer substantial loss and that the appeal will be rendered nugatory and that she has high chance in succeeding in the appeal. I find her affidavit vague on this issue. The applicant in the case cited by the applicant clearly demonstrated the loss he would suffer and the court was able to find that the applicant had an arguable appeal. In my view the applicant has failed to persuade this court that she will suffer substantial loss and it's not clear what security she is willing to offer. I therefore find that the application lacks merit and its dismissed. Parties to bear their own costs.

DATED, SIGNED AND DELIVERED AT BUNGOMA VIA MICROSOFT TEAMS THIS 27TH DAY OF APRIL, 2023.

R.E. OUGO

JUDGE

In the presence of:

Miss Wanyama h/b Mr. Bw'onchiri for the Appellant/Applicant

Respondent Absent

Wilkister C/A

