



REPUBLIC OF KENYA



**Wachire v Omollo & 2 others (Succession Cause 1187 of 2013)
[2023] KEHC 22917 (KLR) (29 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22917 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
SUCCESSION CAUSE 1187 OF 2013
RE ABURILI, J
SEPTEMBER 29, 2023
IN THE MATTER OF THE ESTATE OF OWUOR OMOLLO ALIAS
DIDACUS OWUOR OMOLLO (DECEASED)**

BETWEEN

HARUN OMOLLO WACHIRE PETITIONER

AND

BENEDETTE ONDORO OMOLLO 1ST OBJECTOR

SIPROSA AJWANG OKWIRI 2ND OBJECTOR

JUSTINA AGWANDA OMOLLO 3RD OBJECTOR

RULING

1. This Ruling was to determine the application dated 27th April 2023 seeking stay of execution of the Ruling delivered on 24th April 2023 pending the hearing and determination of the intended appeal from the said Ruling and for leave of this court to appeal against the ruling of the court delivered on 24th April 2023.
2. The application is made pursuant to section 50 of the *Law of Succession Act*, as there is no automatic right of appeal from the decision of the High Court in Succession Causes to the Court of Appeal, unlike in the case of the decision of the Magistrate's Courts.
3. The grounds upon which the application is predicated are that in the impugned Ruling, the court revoked the grant issued to the applicant and further revoked titles which had been transferred from the deceased to the petitioner who is a step brother to the deceased. That the said decision is prejudicial since the applicant is also one of deceased's siblings hence executing the said order will risk him losing his only parcel of land including all the properties in it; that the appeal as intended will be rendered



nugatory if the stay is not granted and the appeal as intended has plausible hence high chances of success. Lastly, that the application was made without unreasonable delay.

4. The application was supported by an affidavit sworn by the applicant Harun Omollo Wachire reiterating the prayers sought in the application, annexing the impugned Ruling.
5. The Respondents did not file any Response to the application which was argued orally. Ms. Otieno reiterated the prayers sought adding that the court had no jurisdiction to revoke title to the land acquired through succession process, and that the jurisdiction lies with the Environment and Land Court. She relied on the case of *Rose Wangui Karanja* [2014] eKLR.
6. Opposing the application, Mr. Oduor counsel for the Respondents argued that the application is a non-starter. That interests of both parties must be balanced and that the title to land must revert to the deceased which is a self-executing process in succession matters. He argued that there is no right of stay of execution and that there is no substantial reason advanced for the prayers sought; noting that there is no appeal filed.
7. Counsel for the respondents claimed that the Respondents filed a replying affidavit on 23rd June 2023 and served on 24th June 2023 although no such affidavit was traceable on the file and no effort was made to avail the same, whether physically or electronically.
8. As I was writing this ruling, it dawned on me that the Ruling which is impugned and from which leave is sought to appeal to the Court of Appeal was rendered by my sister Judge M. S. Shariff. I then asked myself how this file ended up in my court yet the same had been dealt with by my sister Judge. I then called her and inquired from her the position and it dawned on me that the court assistants diverted this file to my court on the understanding that since the matter had previously been dealt with by F. A. Ochieng J. in High Court 1, then it ought to have been before me as per our administrative arrangement existing where all matters which were previously handled by Mr Justice F.A.Ochieng are to be handled by High Court 1 while those matters that were previously handled by Justice Kamau are to be handled by Justice Shariff.
9. I expressed my discomfort in handling the matter which was handled by my sister Judge quite recently yet she is still in the court station and has not recused herself from hearing and determining the matter. Albeit the learned Judge urged me to go ahead and write the ruling in the matter, good conscience prevailed upon me that I ought not to have heard the application in the first instance.
10. I must admit that it did not occur to me that the application was predicated on the ruling rendered by my sister Judge Shariff. I heard the application on the first day that it was placed before me without first checking what transpired previously before the learned Judge who had given directions on the disposal of the application.
11. For the above reasons, I decline to render a merit ruling and direct that this file be placed before Hon. M. S. Shariff J. for directions on the hearing and determination of the application dated 27th April 2023.
12. Mention before High Court 2 on 12/10/2023.
13. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 29TH DAY OF SEPTEMBER, 2023

R. E. ABURILI

JUDGE

