



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT GARISSA

MISC. APPLICATION NO. 10 OF 2021

NUR ABDIRAHMAN MOHAMED.....APPLICANT

VERSUS

AHMED ABDIRAHMAN MOHAMED AND OTHERS.....RESPONDENTS

RULING

1. **Article 159 (d)** of the Constitution of Kenya 2010 requires the court to administer justice without undue regard to procedural technicalities. And **Article 159 (b)** requires justice not to be delayed.

2. **Section 3A** of the Civil Procedure Act provides that nothing in the Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

3. **Section 1A** of the Civil Procedure Act provides that the objective of the Act and the rules is to facilitate the just, expeditious, proportionate and affordable resolution of all disputes governed by the Act.

Section 1A (3) of the Civil Procedure Act requires a party or a counsel on record to assist the court in furtherance of the overriding objectives.

4. The Court will consider the matter before it against the above provisions of the law. On the 26th of July, 2021, the firm of Iqra Bare & Co. Advocates sought to have the appeal admitted out of time, draft memorandum deemed as filed and any other order the court deem fit.

5. In the certificate accompanying the affidavit it was indicated that the matter was urgent, the applicant contest the judgement of the Hon. Kadhi on distribution and the court needs to intervene to avoid sale of some of the assets. In paragraph 15 of the supporting affidavit there is an averment of likely loss and irreparable harm.

6. On the 27th of July, 2021 the court directed the application be served and using its discretion stayed execution of the Kadhi's orders pending hearing of the application *inter partes*.

7. Following the above orders, the respondent filed a preliminary objection objecting to the court's order for stay pending hearing and determination of the pending application, stating that the respondent was not heard and the order had not been specifically pleaded. Secondly, it was urged that counsel for the applicant had not filed a notice of appointment. Paragraph 3 of the objection refers to an assertion that the affidavit is defective flawed, full of inaccuracies, paragraph 4 states that the applicant is indolent, is guilty of laches, appeal is devoid of merit, is frivolous and vexatious.

8. In responding to the preliminary objection, counsel for the applicant raised the issue of the respondent's counsel lacking a practicing certificate and therefore being incompetent to prosecute the matter.

9. A quick check at the law society website indicates that counsel appearing for the Respondent is unknown and Counsel appearing for the applicant has no practicing certificate. Indeed, counsel for the Respondent either by design or inadvertently did not answer to the issue raised.

10. Counsel for the applicant although belatedly, regularized his appearance by filing a notice of Appointment on the 18th of October, 2021.

11. Although the court will not be drawn into technicalities having made reference to the Articles of the Constitution and statute, for the sake of good order Mr. Abdinoor and Mr. Yussuf Abdi Sheikh are directed to produce their practicing certificate to take care of the issue of competence raised.

12. Lastly this is a matter of inheritance involving family. It is emotive and the court using its inherent power wanted to maintain status quo before hearing and determining the pending application stayed the order of the Kadhi. Neither the applicant nor the respondents were heard.

13. The order of the court so remains for now, the preliminary objection is declined. The application is dated 26th July 2021 do proceed to hearing, the side shows to end in order to ensure that the parties herein obtain justice expeditiously without any further delay.

DELIVERED, SIGNED AND DELIVERED AT GARISSA THIS 24^{T#} MARCH, 2022

.....

ALI-ARONI

JUDGE