

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CIVIL APPEAL CASE NO. 168 OF 2019

NAHASHON MATI MANYERA.....APPELLANT

VS

RAEL KANANU KOBIA.....RESPONDENT

(Being an Appeal against the Consent Judgement and decree in Maua CMCC of No.167 of 2019 entered by Honourable C.K. Obara PM on 16th December 2019)

RULING

The Appellant herein moved the court by an application dated 30th December 2019 seeking that the court issues an order for stay of execution of the consent judgment and decree in Maua CMCC No. 169 of 2019 pending hearing and determination of the appeal.

The application is based on grounds on the face of the application and affidavit of Nahashon Mati Manyera who said that he didn't give instructions to his advocate to record consent in Maua CMCC No 167 of 2019 and he was not taken through the terms of the consent recorded and that his advocate negated his attempts to present his case at the Lower court but she was disregarded. He said the elders of the clan from which the deceased hailed had passed a verdict that the deceased be buried by the 1st wife for whom he had filed the suit in the Lower court.

This application was opposed by the Replying Affidavit of Rael Kananu Kobia sworn on 6th January 2020 and the Replying Affidavit of Peter Thurania Murungi sworn on 7th January 2020.

Having considered the application the grounds and averments in the supporting affidavit as well as the averments in the Replying Affidavits. I do find that the application for stay and to set aside consent order has no merit. The applicant has not satisfied the court that the consent order should be set aside and even if it is assumed he had satisfied the grounds upon which consent orders are to be set aside he ought to have approached the court which recorded the consent to set it aside before moving to the High Court. The conduct of the Appellant from the proceedings leave a lot to be desired. There is nothing to show the suit in Maua CMCC 167 of 2019 was a representative suit and the Assistant Chief of Njia Ciamwendwa has sworn an affidavit saying the only known wife of the deceased was Rael Kananu Kobia. This averment has not been controverted, claims that clan elders met and agreed to have the body of the deceased buried by the 1st wife is an issue that should have been raised in the Lower court during trial.

The Appellant is hereby ordered to produce the body of the deceased for burial as per the order of the court made on 9.12.2019 within 7 days of this ruling, failure to which he risks being cited for contempt of court order.

Costs of this application to be paid by the appellant/Applicant

HON A. ONG'INJO

JUDGE

RULING DELIVERED, DATED AND SIGNED IN COURT ON 23rd DAY OF JANUARY 2020.

In the presence of:

C/A: Kinoti

Appellant:- Mr Munene Advocate for Appellant

Respondent:-Mr Muthamia Advocate holding brief for Hosea Mutembei Advocate for Respondent .

HON A. ONG'INJO

JUDGE