

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

SUCCESSION CAUSE NO. 253 OF 2013

GLADYS KEMUNTO MACHUKA & ANOTHER.....PETITIONER/RESPONDENT

VERSUS

DAVID OGEKA NYAKWAMA & ANOTHER.....OBJECTORS/APPLICANTS

RULING

1. By a Chamber summons dated the 10th December 2019 brought under section 73 of the Probate and Administration Rules Gladys Kemunto Machuka the petitioner (“Gladys”) seeks to have a stay of further proceedings pending the hearing and determination of Succession Appeal No. 166 of 2019 in Kisumu Court of Appeal. She also seeks that the application be in the cause. The application is supported by the affidavit of Gladys and grounds on the face of the application. The application was served on the David Ogega Nyakwama lawyer but there was no response.

2. The respondent did not respond to the application, though served.

3. In her affidavit dated the 10th December 2019 and grounds on the face of the application Gladys deposes as follows; on the 29th day of May 2019 this court made a ruling which they were not satisfied with and they filed an appeal to the Court of Appeal in Kisumu same being Case No. 166 of 2019. That she knows that the respondent has filed an application for confirmation of grant when the appeal has not been heard. That the applicants shall be greatly prejudiced if the proceedings are allowed to proceed before the hearing of the appeal in Kisumu and that the respondent shall not suffer any prejudice if the application is allowed.

4. In an application to stay proceedings the court is required to exercise judicial discretion in the interest of justice. The court should also consider the pros and cons of granting or not granting the said order. In **Christopher Ndolo Mutuku & Another vs. CFC Stanbic Bank Ltd (2015) eKLR**, the Court observed that;

“...what matters in an application for stay of proceedings pending appeal is the overall impression the Court makes out of the total sum of the circumstances of each, which should arouse almost a compulsion that the proceedings should be stayed in the interest of justice...”

5. The application was filed on the 10th December 2019. The ruling was read on the 28th May 2019. The applicant has not explained why it took about six months to file the application for stay of proceedings. The memorandum of appeal is dated 13th August 2019, 3 months after the ruling. Considering the time taken by the applicant to file the current application I find that there is inordinate delay which has not been explained. It is apparent that the applicant only woke up after the respondent filed the application to confirm the grant on the 28th of November 2019. Further the applicant does not explain how she will be prejudiced if the order is not granted. In my view the applicant is not entitled to an order of stay of proceedings. I dismiss the application dated the 10th December 2019 with no order as to costs.

Dated, signed and delivered at KISII this 27th day of February 2020.

R.E.OUGO

JUDGE

In the presence of;

Applicant Absent

Miss Nyandoro h/b Mr. Bosire For the Respondent

Ms. Rael Court Assistant