



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

SUCCESSION CAUSE NO. 249 OF 2013

IN THE MATTER OF THE ESTATE OF THE LATE GEORGE TEVULO MUINDI - (DECEASED)

MARTHA TEVULO MUINDI..... 1ST PETITIONER /APPLICANT

VERSES

PRISCILLA WANJA MUINDI.....2ND PETITIONER/RESPONDENT

RULING

1. By her Notice of Motion dated **18th May 2020** the Applicant seeks the orders of this court to stay the decree and judgment of this court dated **8th April 2020** pending the determination of the intended appeal to the Court of Appeal. In her supporting affidavit sworn on the same date the applicant deponed that she was dissatisfied with this court's judgment which distributed the deceased estate unfairly as it did not take into consideration the valuations on record.
2. She further said that some of the properties especially those in Kitale town were not fairly distributed and consequently she has filed a notice of appeal to the Court of Appeal which she annexed to the supporting affidavit.
3. The Respondent who is also an administrator to the estate as well as a co -widow to the deceased just like the applicant has opposed the application vide her replying affidavit sworn on the **23rd June 2020**. She said that the distribution of the estate by the court was fair as it took into consideration the deceased wishes prior to his demise. She said that the two contested properties at Kitale town namely plot numbers 23 and 15 are all developed and there was no advantage she would have over the applicant.
4. She said that both families as at the time the deceased was alive lived in Machakos and Kitale a fact which was well acknowledged by the parties and that the properties were equal in that respect.
5. She further stated that the applicant's house as at the time of the judgement of this court had already sold some of the properties in Machakos a fact which was within the Applicant's knowledge.
6. This court asked the parties to file written submissions and apparently the respondent's submissions are not on record as at the time of writing this ruling.
7. Be it as it may, the submission's by the applicant clearly lays down the basis for granting the orders sought namely, that the application has to be made without undue delay, that the applicant must demonstrate if any, what she stands to suffer if the application is not allowed. The court of course is granted the discretionary powers to grant the orders for any other sufficient cause.
8. The application has undoubtedly been made expeditiously. The question however is what does the applicant stands to suffer? The estate is large both in terms of the beneficiaries as well as the property. It would appear that the bone of contention in my view is the Kitale town properties which perhaps have better returns. It is also possible that the other assets of the estate may have been sold by the parties. That issue was not brought to the attention of the court during the substantive hearing.
9. Granting a blanket stay of the judgement of this court will cause substantial injustice to the parties especially in regard to the undisputed assets. It is in my view necessary that the estate is allowed to run at the same time the applicant be granted the right to appeal which is constitutional. In any event the parties prior to the conclusion of the cause had grafted their own *modus operanti* which seemed to have worked.
10. For the foraging reasons the status of the two Kitale properties namely **PLOT NUMBER 23 NILE BUILDING AND KITALE GUEST HOUSE BUILDING PLOT NUMBER 15** be held in abeyance pending the determination of the intended appeal. In other words, there shall be no transfer or transmission of the same as per the judgement of this court but the parties shall continue utilising the same as before pending the said appeal.

11. This orders shall not affect the rest of the properties of the estate as distributed in the impugned judgement.

12. Costs of this application shall be in the cause.

Dated, signed and delivered at Kitale this 30th day of July 2020.

H. K .CHEMITEI

JUDGE

30/7/2020

In the presence of:

Ms Wanjala for the Applicant

Mr Bororio for Okile for respondent

Court Assistant – Kirong

Ruling read in chambers.