



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

(Coram: Odunga, J)

SUCCESSION CAUSE NO. 1035 OF 2012

IN THE MATTER OF THE ESTATE OF DOMINIC MUTUKU MWOLE (DECEASED)

URBANUS MUINDE MUTUKU.....OBJECTOR

VERSUS

DANIEL MBITHUKA MBINDA.....ADMINISTRATOR

RULING

1. On 6th November 2019, I issued an order in this matter by which I dismissed the protest filed herein and proceeded to allow the Summons for Rectification of Confirmed Grant dated 9th July, 2018. Accordingly, I directed that the Confirmed Grant herein be rectified to reflect the correct acreage to be administered by the Petitioner as 15 acres of the said Land Parcel Machakos/Mua Hills/650 instead of the entire parcel which measures 39.22 acres and that the remaining portion of the same measuring 24.22 acres revert to the estate of the deceased.

2. Aggrieved by the said ruling, the Objector vide an application dated 20th January, 2020 applied to have the said decision stayed pending the hearing and determination of his intended appeal to the Court of Appeal.

3. It would seem that no Notice of Appeal was filed within time since from the Ruling of the Court of Appeal delivered on 10th July, 2020 in Nairobi Court of Appeal Civil Application No. 6 of 2020 – **Urbanus Muinde Mutuku vs. Daniel Mbithuka Mbinda**, the Objector by an application dated 7th January, 2020 sought extension of time for filing of the said Notice. After hearing the said application, the said Court (**Gatembu, JA**) found no merit in the same and proceeded to dismiss it.

4. An application for stay pending appeal can only be granted where the applicant intends to appeal. Where however his attempts to appeal have been unsuccessful, he cannot be granted such a stay.

5. The Objector's application seeking to have time extended having been dismissed, it follows that the substratum of the instant application also crumbles.

6. It follows that the application dated 20th January, 2020 is incompetently before this Court and is hereby struck out with costs to the Respondent.

7. It is so ordered.

Read, signed and delivered in open Court at Machakos this 23rd day of September, 2020.

G V ODUNGA

JUDGE

Delivered in the presence of:

Mr Nthiwa for Mr D. M Mutinda for the Applicant

Ms Thiongo for the Respondent

CA Geoffrey