

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 1106 OF 2010

IN THE MATTER OF THE ESTATE OF CYRUS MBEERE GITHINJI (DECEASED)

DR. SYMON WAIRAGU GITHAE.....2ND ADMINISTRATOR/APPLICANT

VERSUS

ALBERT NJERU GITHAE.....1ST ADMINISTRATOR/RESPONDENT

RULING

1. On 5th October 2017 this court gave a judgment in which it distributed the estate of the deceased Cyrus Mbeere Githinji to the beneficiaries who were his children. The children were ordered to share the estate equally. The applicant Symon Wairagu Githae was one of the children. He was aggrieved by the judgment and filed an appeal on 11th October 2017. The main ground in the appeal was that the deceased had left an oral will on how the estate should be shared; but that this court had found that there was no oral will and had gone ahead to distribute the estate under **section 38** of the **Law of Succession Act (Cap.160)**. In the application dated 22nd June 2018 he sought the stay of proceedings herein pending the hearing and determination of the appeal. His case was that there is an application for confirmation dated 4th February 2018 which is scheduled for hearing; that, if the proceedings are not stayed, the application will be heard and determined, and that will occasion him substantial loss and would render the appeal nugatory.

2. The application was opposed by his brother Albert Njeru Githae (the respondent) whose case was that the appeal has no chances of success and that the same would not be rendered nugatory if the application is dismissed.

3. I note that the application dated 4th February 2018 and filed on 5th March 2018 to confirm the grant was wholly not necessary. This is because the estate was shared through the judgment that is the subject of the appeal. The proceedings leading to the judgment were in respect of the application filed on 29th August 2011 to have the grant confirmed. It was by the respondent. It was opposed by the applicant. The application was heard by way of oral evidence. What should follow is the issuance of a certificate of confirmation in terms of the judgment. A decree in terms of the certificate will then be executed.

4. Ideally then, the applicant ought to have brought an application to stay the execution of the decree/the certificate of confirmation. Otherwise, the cause has no other proceedings capable of being stayed. To that extent the application is misconceived. It is dismissed with costs.

DATED and SIGNED at Nairobi this 19TH day of FEBRUARY 2019

A.O. MUCHELULE

JUDGE

DATED and DELIVERED at Nairobi this 26TH day of FEBRUARY 2019

ALI-ARONI

JUDGE