



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO.134 OF 2005

IN THE MATTER OF THE ESTATE OF STAVANO M'MAERIA M'LIKABUA (DECEASED)

ISAIAH IRUKIPETITIONER/APPLICANT

VERSUS

ISAAC MUTHINE STAFANO.....PROTESTOR/RESPONDENT

R U L I N G

1. Before me is an application by Isaiah Iruki seeking leave to file an appeal against the judgment of this court made on 6th December 2018 and a stay of execution of the judgment pending the hearing and determination of the appeal against the said judgment.

2. In its judgment, this Court found that **Catherine Stavano** and **Isaac Muthine Stavano** were the immediate beneficiaries of the deceased. It made the following determination:-

“That the grant issued to Isaiah Iruki on 11th June 2006 is hereby revoked. The entries made on the title Number Njia-Burie-ru-ri/792 are hereby cancelled and the title reverted back to the name of M'Maeri M'Likaibua.”

3. The applicant was dissatisfied with the decision and filed a Notice of Appeal on 20th December 2018. He also moved this Court on 19th December 2018 for leave to appeal to the Court of Appeal and for stay of execution of the said judgment. The court (Gikonyo J) properly granted the applicant leave to appeal and what is pending before this court is the prayer for stay of execution of the said judgment.

4. The application is supported by the affidavit of Isaiah Iruki. It is premised on the following grounds; that the court adjudged the protestor as a beneficiary of the estate which is against the weight of the evidence that was adduced, that unless the order for stay of enforcement of the judgment is granted, and the protestor proceeds to execute the same, the applicant shall stand to suffer irreparably. That the order for the stay of execution is also necessary to preserve the status quo.

5. The application was opposed by the petitioner/respondent vide his Replying Affidavit dated 28th January, 2019. He averred that he has been staying on the estate property and that he has not taken any steps to interfere with the title deed since the same still remains in the name of the petitioner.

6. As a general rule, an order for stay of execution is a discretionary order and can only issue when the court is satisfied that an applicant stands to suffer irreparable loss and that the application is made without unreasonable delay. **(See Kungu Muthua v James Icharia Kungu [2015] eKLR and Turbo Transporters Ltd v. Absalom Dova Lumbasi [2012] E Klr.**

7. The application was made fourteen (14) days after the judgment was delivered, In this regard, I am satisfied that it was made without undue delay. Indeed, the applicant filed the Notice of Appeal on 20th December 2018 to envince his intention to appeal against the impugned decision.

8. In an application for stay of execution pending appeal, an applicant must establish that unless the order sought to be stayed is granted, he/she will suffer irreparable loss and damage. That the status quo might be irreversibly be changed.

9. In the present case, the court only ordered that the property reverts back to the name of the deceased. The court did not venture into distributing the estate, as it was entitled to, to the respondent and his sister and or any other person.

10. As already stated, the judgment only revoked the grant that was issued to the petitioner and ordered that title **No. Njia-Burie-ru-ri/792**, do revert back to the name of the deceased. This has not yet been effected as the title still remains in the name of the petitioner/applicant. Even if the title reverted back to the name of the deceased, there has to be steps to be taken by the respondent before the said title can pass to

3rd parties, including the respondent himself.

11. In this regard, I am unable to see, any irreparable harm being occasioned upon the applicant if the stay order sought is not granted.

12. Accordingly, the order for stay pending appeal is hereby dismissed with costs to the respondent.

DATED and **DELIVERED** at Meru this 10th day of April, 2019.

A. MABEYA

JUDGE