



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KERICHO**

**SUCCESSION CAUSE NO 18 OF 2018**

**VERONICAH CHERONO RONO.....APPLICANT**

**VS**

**MARY CHERONO TITUS.....PETITIONER**

**RULING**

1. This matter first came before me on 26<sup>th</sup> November 2018 for the hearing of an application by the petitioner dated 1<sup>st</sup> November, 2018. The application, expressed to be brought under section 364 (1) of the Insolvency Act, regulation 10(4) of the Insolvency Regulations, 2016 and order 22 of the Civil Procedure Rules sought a temporary order of stay of execution of the judgment and decree dated 7<sup>th</sup> October 2013 in **Kericho CMCC No. 333 of 2009 – Veronica Cheronon Rono vs Spinners & Spinners Limited & 2 Others**. The basis of the application was that the plaintiff in the case had a decree in the sum of Kshs 1,293,267 against the estate of the deceased in this cause, John Kipkorir Rop.
2. In the course of hearing of the application which was presented on behalf of the applicant by Learned Counsel, Mr. Brian Langat, Learned Counsel, Mr. Obondo Koko, who was present in court but was not on record in the matter, indicated that he had an interest in the matter as he was acting for the decree holder. He requested the court to grant him time, arguing that given time, he would be able to prove that the deceased did not die without leaving assets, and he would be able to file the requisite documents.
3. I accordingly directed the applicant to serve the application on the decree holder, and for the decree holder to file a response within 14 days. I also directed the parties to file submissions on the application thereafter and for the matter to be mentioned to confirm compliance on 29<sup>th</sup> January 2019. I also issued orders of stay of the judgment and decree pending further orders of the court.
4. When the matter came up as scheduled on 29<sup>th</sup> January 2019, Mr. Koko was absent but had requested Mr. Kirui to hold his brief. No notice of appointment had been filed, and Mr. Langat appearing for the petitioner indicated that though the decree holder had been served, she had not filed a reply or submissions as directed on 26<sup>th</sup> November 2018. Mr. Kirui did not make any statement or application according to the record. I accordingly reserved ruling in the matter for 27<sup>th</sup> March 2019.
5. In the course of preparing the ruling on the application dated 1<sup>st</sup> November 2018, however, I have noted on the court file an application dated 20<sup>th</sup> February 2019 and filed on 25<sup>th</sup> February 2019. Accompanying the application is a notice of appointment dated 20<sup>th</sup> February 2019 in which the applicant/decreed holder appoints Messrs. Obondo Koko & Co Advocates to act for her in the matter. It is not clear at what point the application found its way to the court file, which was pending ruling.
6. In this application, the applicant, the decree holder represented by the firm of Obondo Koko & Co. Advocates, seeks to set aside the directions/ruling made on 29<sup>th</sup> January 2019. The basis of the application is that the court had on 29<sup>th</sup> January 2019 dismissed the applicant's oral application seeking more time to file a response upon filing a notice of appointment. It alleges that the applicant has a constitutionally guaranteed right under Article 50, which encompasses the right to respond to any claim. In his affidavit sworn on 26<sup>th</sup> February 2019 and filed in court on 25<sup>th</sup> February 2019, Mr. Obondo reiterates the contents of the grounds set out in support of the application.
7. I make three observations about the application dated 20<sup>th</sup> February 2019 and filed on 25<sup>th</sup> February 2019. First, it was filed almost a month after the date the orders it seeks to set aside were issued. Secondly, directions were given on 26<sup>th</sup> November 2018 in the presence of Mr. Kioko, so he had more than two months to file a response and submissions. Thirdly, the record will bear out that Mr. Koko was absent on 29<sup>th</sup> January 2019 and had not filed a notice of appointment. Mr. Kirui, who held his brief on 29<sup>th</sup> January 2019, did not make any application for more time to file a response. Indeed, the record indicates that he did not address the court at all.
8. The court expects officers of the court to be forthright and take responsibility for their acts of omissions. To allege a denial of the right to a

hearing in the circumstances of this case is to be less than honest.

9. The applicant, Veronicah Cheronon Rono, has a decree against the deceased's estate. She deserves to be heard. The person who would deny her a hearing, however, is not this court, but her Counsel, who failed to file the requisite documents within the time he was required to.

10. Accordingly, in order to meet the ends of justice, I will allow the applicant, Ms. Rono, to file her response to the application dated 1<sup>st</sup> November 2018, as well as her written submissions thereon. Thereafter, the file shall be placed before the Presiding Judge in Kericho to render a ruling on the said application.

11. In the meantime, the orders of stay of execution of the decree in Kericho CMCC No 333 of 2013 shall remain in force.

**Dated and Signed this 10<sup>th</sup> day of May 2019**

**MUMBI NGUGI**

**JUDGE**

**Dated Delivered and Signed at Kericho this 19th day of June 2019**

**GEORGE DULU**

**JUDGE**