



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 1587 OF 2012**

**IN THE MATTER OF THE ESTATE OF KIVUTO NDETI (DECEASED)**

**MATEI JULIUS MULILI NDETI & NZIOKI MULILI NDETI**

*(Administrators of the estate of*

**HARRISON MULILI NDETI.....1<sup>ST</sup> INTERESTED PARTY/APPLICANT**

**SYOKWIA KIILU NDETI AND VINCENT SOMBA NDETI**

*(Administrators of the estate of*

**JULIUS KIILU NDETI (Deceased).....2<sup>ND</sup> INTERESTED PARTY/APPLICANT**

**GREGORY MUTHEKE NDETI**

*(Administrators of the estate of MUTHEKE*

**MUTUA NDETI (Deceased).....3<sup>RD</sup> INTERESTED PARTY/APPLICANT**

**URBANUS KIOKO NDETI & BONIFACE NTHIWA NDETI**

*(Administrators of the estate of ALPHONSE*

**NTHIWA NDETI (Deceased).....4<sup>TH</sup> INTERESTED PARTY/APPLICANT**

**ALEX KIILU NDETI AND ESTHER NGONDU NDETI WAQQ**

*(Administrators of the estate of PATRICK*

**MUTHEKE NDETI (Deceased).....5<sup>TH</sup> INTERESTED PARTY/APPLICANT**

**VERSUS**

**CECILIA SITUMAI NDETI.....1<sup>ST</sup> PETITIONER/1<sup>ST</sup> RESPONDENT**

**MICHAEL KYENDE NDETI.....2<sup>ND</sup> PETITIONER/2<sup>ND</sup> RESPONDENT**

**RULING**

1. The deceased Kivuto Ndeti died intestate on 31<sup>st</sup> March 2012. He left a widow Cecilia Situmai Ndeti (1<sup>st</sup> respondent) with several children. One of them was Michael Kyende Ndeti (the 2<sup>nd</sup> respondent). The respondents petitioned this court for the grant of letters of

administration intestate. The grant was issued on 24<sup>th</sup> January 2013, and confirmed on 30<sup>th</sup> October 2013. His estate comprised various parcels of land, money in the bank and shares. All these were shared among the respondents and the rest of the family.

2. In an application dated 11<sup>th</sup> July 2016, the applicants (who are administrators of the estate of the deceased Harrison Mulili Ndeti, Julius Kiilu Ndeti, Mutheke Mutua Ndeti, Alfonse Nthiwa Ndeti and Patrick Mutheke Ndeti, respectively) sought the revocation of the grant issued and confirmed to the respondents. Their case was that the property in the estate subject of the case, although registered in the name of the deceased, belonged not only to him but to the larger Ndeti family; that the deceased persons whose estates the applicants are administering were partners in business with the deceased who therefore held the properties in trust for the rest of the members. They were not involved in the petition and the distribution of the estate by the respondents, it was stated. The respondents replied that, though the deceased did business with these other deceased persons he also carried out businesses individually; and that the estate herein comprised property he had acquired individually.

3. On 21<sup>st</sup> June 2018 Justice M. Musyoka, after hearing the application, dismissed it with costs.

4. The applicants appealed the decision in the Court of Appeal. They now seek the stay of the ruling of 21<sup>st</sup> June 2018 pending the hearing and determination of the appeal. They also sought the stay of the implementation of the certificate of confirmation issued on 30<sup>th</sup> November 2013. It was their case that if stay is not granted they would suffer irreparable loss, as the respondents would go ahead to distribute the properties to the beneficiaries of the deceased and yet they (the applicants) had a claim to those properties. They made reference to a Court of Appeal decision in **C.A No. 56 of 2013** which had allegedly declared LR No. 7149 (IR No. 1872/2) as not belonging to the deceased (although registered in his name) but belonging to him jointly with the rest of Ndeti family. However, the proceedings in this case were not annexed.

5. The respondents opposed the application. Their case was that when the applicants applied to the Court of Appeal to appeal out of time there was also a prayer that there be stay until the appeal was heard and determined. There was also prayer that the implementation of the certificate of confirmation be stayed. Leave to appeal was allowed, but stay was denied. The applicants argued that his court could not be asked to grant stay which the Court of Appeal had unsuccessfully been asked to grant. I have seen the order of the Court of Appeal made on 8<sup>th</sup> November 2018 by Makhandia J.A.

6. The orders of 14<sup>th</sup> June 2018 were dismissal orders. They were negative orders. The parties were not ordered to do anything, or stopped from doing anything, or to pay any money. There was nothing arising from the decision for the court to enforce or restrain by injunction (**Ndungu Kinyanjui –v- Kibichoi Kugeria Services & Another, Civil application No. 79 of 2007**). The application is therefore misconceived.

7. It is material to mention that, it was not indicated how far the implementation of the orders confirming the grant had gone. It may serve no purpose if, for instance, the estate has already been shared and parties have acquired titles. One cannot assume that the estate is still in the hands of the respondents. If titles have moved to the beneficiaries, an order of stay cannot issue without reference to them.

8. If the applicants did not persuade the Court of Appeal to grant stay, or to stay the implementation of the certificate of confirmation, it would be difficult for this court to revisit the issue.

9. I find no merit in the application which I dismiss with costs.

**DATED and DELIVERED at NAIROBI this 27<sup>TH</sup> NOVEMBER 2019.**

**A.O. MUCHELULE**

**JUDGE**