



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO.24 OF 2017**

**IN THE MATTER OF THE ESTATE OF MARGARET NJAMBI THUO (DECEASED)**

**CECILIA WANGARI THUO.....OBJECTOR/APPLICANT**

**V E R S U S**

**PHILIS WANGUI KIBURI.....PETITIONER/RESPONSENT**

**R U L I N G**

By the Notice of Motion dated 9/9/2019, the Objector/Applicant, Cecilia Wangari Thuo seeks the following prayers before the court: That there be stay of execution of the Hon. Court’s Judgment/Decree dated 19/7/2019 pending the hearing and determination of the intended appeal preferred against the court’s judgment. When the application was brought before the Judge under Certificate of Urgency, no interim orders were granted. The application is scheduled for hearing on 4/3/2020.

The applicant filed another Notice of Motion dated 5/12/2019 seeking a stay of execution pending the hearing and determination of the application inter-partes. The same was not issued because there was no threat of execution.

On 11/12/2019, the applicant’s counsel filed another certificate to the effect that the respondent had engaged a surveyor who was due to carry out survey work and subdivision on 18/12/2019, that is, today.

The application was opposed by Mr. Maina Kairu who submitted that the application is an abuse of the court process because twice, the court had not granted a temporary order of stay.

He also argued that the application is fatally defective having been brought under Order 42, 22 and 51 of Civil Procedure Rules and Section 3A Civil Procedure Act which are not applicable to an application under the Law of Succession Act Cap.160 LoK and that the applicant should await the hearing after the application on merit.

I have considered the application and the response there to. When the applicant first came to court, there was no threat of execution. However, the same has now arisen. Mr. Murimi submitted that the respondent has sought execution twice, on 2/12/2019 and now on 18/12/2019. The subject matter herein is the estate of the deceased, a mother to the objector and respondent. If subdivision is carried out now, before the hearing of the application inter-partes, then the substratum will disappear.

Even though counsel invoked the wrong provision of law, the court in this instance must do justice to the parties by maintaining the status quo till the application for stay is heard and determined. The respondent can wait for 2 more months and will not suffer any prejudice. In the end, I grant an interim order of stay of this court’s judgment dated 19/7/2019 pending hearing of the application inter-partes on 4/3/2020.

Costs to be in the cause.

**Dated, Signed and Delivered at NYAHURURU this 18th day of December, 2019.**

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**R.P.V. Wendoh**

**JUDGE**

**PRESENT:**

**Mr. Murimi for objector**

**Mr. Maina Kairu for respondent**

**Soi- Court Assistant**