



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NYAMIRA**

**HIGH COURT CIVIL APPEAL NO.11 OF 2018**

**SEREBINE MORAA ONDICHO.....DEFENDANT/APPLICANT**

**SAMWEL OPANDE OMBOGO.....DEFENDANT/APPLICANT**

**JAPHET MAYAKA BWARI.....DEFENDANT/APPLICANT**

**VERSUS**

**JOSEPHAT OMOI OMBOGA.....PLAINTIFF/RESPONDENT**

**RULING**

What is before me is the application by the appellants seeking a stay of the orders of the lower court pending hearing and determination of the appeal herein. The application is made in the Notice of Motion dated 10<sup>th</sup> of May 2018 and filed herein on 11<sup>th</sup> May 2018.

The application is premised on grounds inter alia, that the appeal herein raises pertinent issues and has overwhelming chances of success; that should the judgement of the lower court be executed the appellant's shall be greatly prejudiced and shall suffer substantial loss as Monica Nyaboke Nyachieo is a total stranger who ought not to be buried on the property in dispute; that burying her on the land is an abomination among the Kisii and as such it would occasion untold pain, suffering and calamity to the appellants and further that the appeal herein risks being turned into a mere academic exercise. It is also urged that the appeal has been made without unreasonable unreasonable delay.

The application is vehemently opposed but having heard and considered the rival submissions of the advocates for the parties and

upon considering the affidavits and grounds of opposition I am satisfied that the appellants would indeed suffer substantial loss were this application refused and the appeal succeeds. The burial dispute herein revolves around the issue of succession in respect of Mugarango/Bonyamatuta/1894 and it would be in the interest of justice that we hear the appeal before the burial of the late Monica Nyaboke Nyachieo, the deceased, on the parcel of land is undertaken. Although in their affidavits the appellants have not offered any security their Advocate submitted that they are willing to abide by any conditions that this court may impose. Accordingly this application is allowed conditioned upon the appellants depositing at the mortuary where the body of the deceased is preserved a sum of Kshs300,000/= (three hundred) within seven (7) days of this ruling to cater for the mortuary fees pending hearing and determination of this appeal which appeal must be heard expeditiously. The costs of this application shall abide the appeal. It is so ordered.

**Signed, dated and delivered this 28<sup>th</sup> May 2018.**

**E.N. MAINA**

**JUDGE**

28/5/2018

**In presence of:**

Mr. Kimaiyo for Wesonga for Appellants

Mr. Momanyi for Respondents

All appellants

Court Assistant Ochieng

The respondent