

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 85 OF 2006

IN THE MATTER OF THE ESTATE OF EUSTACE KAGAU KANGERWE (DECEASED)

RULING

1. The judgment that I had prepared in this matter, dated 3rd May 2017, was delivered on my behalf by Muigai J on 5th May 2017. In it I allowed an application for revocation of grant on certain terms.
2. The respondent in the revocation application, Moffat Nyaga Kagau, was aggrieved by the said outcome, and desired to file appeal against the same. He filed a notice of appeal, dated 11th May 2017, on 19th May 2017. He also wrote a letter to the Deputy Registrar, dated 9th May 2017, and lodged herein on 10th May 2017, asking for a copy of the judgment. He followed that up with a summons dated 19th May 2017, seeking two principal orders: leave for change of advocates and for stay of execution of the said judgment pending appeal. The applicant has, in his supporting affidavit, stated the reasons why he is aggrieved and the points of law that he seeks to articulate before the Court of Appeal.
3. Upon being served, the respondents to the instant application have replied to it through Eunice Wanjue Kagau, who swore an affidavit on 12th June 2017. She in principle concedes that the applicant is entitled to be aggrieved by an order of a court and has a right to challenge the order on appeal. Her concern is that the matter has been in court for a long time, and the applicant has been in control of the estate for all those years. She fears that the estate may be squandered in the interim. The applicant has filed a rejoinder to the reply to respond to the issues raised in the reply.
4. The parties agreed to dispose of the application by way of written submissions. Both sides have filed detailed written submissions complete with authorities to support their respective positions. I have read through them and noted the arguments advanced therein.
5. It is within the rights of a party to be aggrieved by the decision of a court, and to seek a second opinion on the same from an appellate court. So, in this case, the applicant is entitled, upon being aggrieved by my decision of 3rd May 2017, to appeal against it. I note from the record that he has taken the preliminary steps towards appealing, by filing a notice of appeal and asking for copies of the judgment and the proceedings that he seeks to challenge. I note too that he took those steps days after the delivery of the judgment, without any delay. This demonstrates his keenness to pursue his right to appeal.
6. I have noted that the respondent principal concern is with the estate being wasted. There are administrators in place to take care of the estate pending appeal. The court did not remove the administrators; it had only appointed an additional administrator. Secondly, the said administrators remain answerable in law for any maladministration during the interim period. Grant of stay does not in any way affect their obligations under the law. The respondent would still retain her right to call for accounts should she be of the opinion that there has been maladministration. It has not been demonstrated that the respondent will be prejudiced should the orders be granted.
7. Consequently, I shall allow the application dated 19th May 2017 in terms of prayers 1 and 3 thereof. Costs shall abide the outcome of the appeal.

DATED, SIGNED and DELIVERED at NAIROBI this 14TH DAY OF JUNE, 2018.

W. MUSYOKA

JUDGE