



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 316 OF 2007

IN THE MATTER OF ESTATE OF M'KIUNGA KATHEMEURA (DECEASED)

MARICELLA MUKIRI M'KIUNGA.....PETITIONER

VS

MARGARET KURI MUNORU.....PROTESTER

RULING

By an application dated 17th July 2018 the Petitioner/Applicant sought under Certificate of Urgency that the court grants leave to under Rule 49 of Probate & Administration Rules to file an appeal against the judgement of this court delivered on 27th June 2018. It was also sought that stays orders be granted.

The application is based on grounds on face of application to the effect applicant was aggrieved by the judgment delivered on 27th June 2018 and that if stay orders are not granted the applicant shall suffer substantial loss and the appeal shall be rendered nugatory. It was also argued that appeal was arguable. The application is also supported by affidavit sworn by Maricella Mukiri M'Kiunga on 17th July 2018. In the affidavit the applicant argues that the court had awarded the estate to a stranger in the name of the protester against the law and thereby disinheriting the real and actual beneficiaries. Applicant claims the protester and her witnesses evidence which the court relied on was full of contradictions. She said order of stay is meant to preserve status quo as she had lived on the estate all her life and had carried out extensive development.

Mr Gikunda Anampiu for Respondent filed Replying Affidavit opposing the application for stay pending appeal to the effect application is founded on the wrong principles and misunderstanding of the law.

He averred that delay in filing the application is not explained as notice ought to have been filed within 14 days. It was argued that issues raised amount to arguing appeal and same is addressed to the wrong forum. It was averred that the application was hollow and without any basis.

I have considered the application before this court and the judgment delivered by the court on 27th June 2018 and find that applicant has not satisfied this court that substantial loss will be suffered if stay of execution is not granted.

This court cannot find that intended appeal will have overwhelming chances of success as it found that the protester herein had proved she was a heir to the deceased and therefore entitled to a share of the estate.

Although parties have alluded to grounds of appeal the only annexure this court has seen to the application is a copy of the judgment of the court and not even a draft Notice of Appeal and Grounds of Appeal that would make the court even believe the applicant is geared to file an appeal which leave was granted on 17th July 2018. Substantial/irreparable loss would be suffered if execution of the court's judgment cannot be reversed. Then subject matter herein is land and even if some portion of it is transferred to the protester the same can be reversed in event that the intended appeal is successful. I do therefore find that the application is not merited and is dismissed with costs.

HON. A.ONG'INJO

JUDGE

RULING SIGNED, DELIVERED AND DATED THIS 9TH DAY OF AUGUST 2018.

IN THE PRESENCE OF:

C/A: Penina

Applicant:- MS Ayata Advocate Holding Brief for Thangicia for Applicant.

Protester:- Ms Gikunda Anampiu Advocate for Respondent.

HON. A.ONG'INJO

JUDGE