

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MARSABIT

CIVIL APPEAL NO.4 OF 2016

1.AHMED ABASS EDI

2. ABDDINASIR ADAN.....APPELLANTS/APPLICANTS

VERSUS

HASSAN ABDI ADAN.....RESPONDENT

RULING

The applicants' application is brought by way of notice of motion dated 5th December 2016 pursuant to sections 1A,1B, and 3A of the Civil Procedure Act and all other enabling provisions of the law. The applicants were seeking four orders but the first two have been spent. The orders that are now in issue are as follows:

- 1.That there be a stay of execution of the judgment and decree and all the consequential orders in Kadhi's case number 90 of 2015 pending inter-parte hearing and determination of the intended appeal.
2. That pending hearing and determination of the appellants' intended appeal herein, the execution of the ruling and order of the Moyale Kadhi's court, in succession cause No.43 of 2012 issued on 23rd November 2016 be stayed.
3. Costs of this application be in the cause.

I have perused the affidavits by both parties and the submissions by their respective counsel. The applicants and the respondent have raised triable issues. These issues can be addressed at the time of the hearing of the appeal.

The applicants have indicated that they have not been able to file the appeal for they have not obtained the court proceedings.

I am persuaded to issue a stay order on the following conditions:

- (a) That the applicants file and serve their appeal within 60 days of the ruling.
- (b) If they fail to do so on failure to be supplied with the proceedings, then they ought to seek this court's intervention at the earliest opportunity.
- (c) Failure to comply with (a) and (b) above the stay order will lapse.

DATED at MARSABIT this 19th Day of April 2017

KIARIE WAWERU KIARIE

JUDGE.