



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

SUCCESSION CAUSE NO. 106 OF 2014

**IN THE MATTER OF THE ESTATE OF KATANA KARISA MADAGO alias KATANA VENGO
(DECEASED)**

CHARO KATANA KENGAPETITIONER/RESPONDENT

VERSUS

KADZO KENGA MADAGO.....1ST OBJECTOR/APPLICANT

NYEVU KENGA.....2ND OBJECTOR/APPLICANT

MOSES MBUGUA MWANGI1ST INTERESTED PARTY

KILIFI MUUNGANO HOUSING

CO-OPERATIVE SOCIETY LIMITED2ND INTERESTED PARTY

RULING

1. In a judgement delivered on 31st October, 2016 my brother Said Chitembwe, J distributed Plot Number Kilifi/Mtondia/160 being a property in the estate of the deceased Katana Karisa Madago alias Katana Vengo as follows:-

- a) Kahaso Kenga Madago - 5.5 acres**
- b) Nyevu Kenga Madago - 1.5 acres**
- c) Charo Katana Kenga - 5 acres**

2. Upon delivery of the judgement, Charo Katana Kenga the Petitioner/Respondent in the objection proceedings filed an application seeking stay of the judgement pending appeal.

3. On 22nd February, 2017 my brother Said Chitembwe, J delivered a ruling granting the application on the following terms:-

“(a) The Petitioner to deposit the original title deed in court for number Kilifi/Mtondia/160 within seven (7) days hereof.

(b) The Petitioner to file his record of appeal before the Court of Appeal within sixty (60) days hereof.

(c) Should the Petitioner fail to deposit the original title deed within seven (7) days hereof, the application dated 29th November, 2016 shall be deemed to have been dismissed with costs to the respondents.

(d) The objectors to continue residing on the suit land until the appeal is heard and determined.”

4. On 5th June, 2017 Mr. Michira for Kadzo Kenga Madago and Nyevu Kenga the objectors/applicants in the objection proceedings moved this court seeking the release of the title deed that had been deposited in court. Michira told the court that the Objectors want to implement the judgement of this court as the Petitioner had failed to comply with the terms of the stay order. He informed the court that no appeal had been filed within the time granted to the Petitioner. He also pointed out that the Petitioner had not deposited the title deed within seven days as had been directed by the court.

5. I gave the Petitioner time to appear in court in order to comment on the allegations made by the Objectors' counsel. On 11th July, 2017 Mr. Shujaa holding brief for Mr. Kenga for the Petitioner informed the court that the Petitioner had filed Appeal No. 44 of 2017 on 5th July, 2017. He submitted that once the appeal was filed there was no good reason for releasing the title deed of the suit property to the Objectors. Mr. Michira did not miss the opportunity of pointing out to the court that the said appeal was filed 104 days from the date the order of stay was granted.

6. A reading of the ruling delivered by this court on 22nd February, 2017 shows that the Petitioner was granted stay pending the hearing and determination of an appeal in the Court of Appeal. The said stay however had three conditions: that the title deed for the suit property was to be deposited in court within seven days from the date of the ruling; that a record of appeal was to be filed in the Court of Appeal within sixty (60) days; that the Objectors were to remain on the suit land pending and hearing and determination of the appeal.

7. The Petitioner did not comply with the conditions of stay. The appeal was filed 104 days from the date of the ruling which was outside the 60 days window that had been given to him by the court. The moment he failed to comply with the timelines, the stay order lapsed. He ought to have sought extension of time from the court. He did not do so. It is only after the Objectors' counsel moved this court for directions that the Petitioner took action. Such a party is one who should not receive the indulgence of the court.

8. I agree with the Objectors that there is no stay in force against the execution of the judgement delivered by this court on 31st October, 2016. In the circumstances I direct that the title deed for Plot No. Kilifi/Mtondia/160 deposited in this court in compliance with the ruling of 22nd February, 2017 be released to the Objectors forthwith for the purposes of the distribution of the estate of the deceased Katana Karisa Madago alias Katana Vengo as per the judgement delivered by this court on 31st October, 2016.

Dated, signed and delivered at Malindi this 27th day of July, 2017.

W. KORIR,

JUDGE OF THE HIGH COURT