

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

SUCCESSION CAUSE NO.68 OF 1986

IN THE MATTER OF THE ESTATE OF

OTIENO AGGREY AMBALA - DECEASED

AND

IN THE MATTER OF AN APPLICATION

BY OTIENO AMBALA JUNIOR

R U L I N G

1. The application before the court is a Notice of Motion dated 18th July, 2016. It is not expressed to be brought under any provision of the law but it seeks the following order:

[3] THAT the Honourable Court be pleased to order a stay of execution herein pending the hearing and determination of the Appeal.

2. The applicant is one of the beneficiaries of the estate of Aggrey Otiemo Ambala (deceased) who died on 8th June, 1986. The final judgment distributing the deceased's estate was rendered on 29th June 2016 and he now seeks to challenge the same on appeal. He lodged a Notice of Appeal dated 12th July 2016 on the same day and applied for and paid for the proceedings.
3. In the deposition the said Odhiambo Ambala Junior depones that that the stay should be issued in the interest of justice and that no prejudice will be suffered by the parties.
4. The application is opposed by Peres Auma Ambala who contends that the applicant has not or satisfied the conditions for grant of an order for stay or that no prejudice has been demonstrated.
5. I have considered the application, depositions and arguments by counsel which reiterated the contents of the depositions and I take the following view of the matter. It is now over 30 years since the deceased passed away and the court has finally distributed the estate. Whereas the applicant has an undoubted right of appeal, he must demonstrate by affidavit that he will suffer substantial loss if the stay is not granted.
6. Substantial loss or prejudice or the fact that the appeal will be rendered nugatory one not just bland words that will be recited in an affidavit like "timeo" in order for the court to issue an order. The applicant has the burden and the duty to satisfy the court by presenting facts.
7. Unfortunately, the applicant's affidavit is rather threadbare and I am compelled to dismiss the application with costs. Orders accordingly.

Dated, signed and delivered at Kisumu this 27th July, 2016.

D. S. MAJANJA

J U D G E