



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT MALINDI**

**CIVIL APPEAL NUMBER 35 OF 2014**

*(From original Kadhi's Court Succession Cause no. 46 of 2013 Before Mohamed B. Twalib – Kadhi, Kilifi)*

**AWADH MOHAMED AWADH .....APPELLANT**

**VERSUS**

**SALIM MOHAMED AWADH & 3 OTHERS .....RESPONDENT**

**RULING**

The application dated 4th December, 2014 seeks stay of proceedings in Kilifi Succession Cause No. 46 of 2013. Pending the hearing and determination of this appeal, the application is supported by the Applicant's affidavit sworn on the same date. The Defendant filed a replying affidavit sworn on 13th December, 2014.

The Applicant informed the court that the suit has been before the Kadhi's court at Kilifi for one year. The Kadhi has been harsh on him and he has lost faith in the Kadhi. According to him, justice will not be served if the matter is heard by that Kadhi.

The 4th Defendant opposed the application. He submitted that the case was before the Mombasa court and the Applicant applied to have it transferred to Kilifi. The case was transferred to Malindi but was later transferred to Kilifi at the Applicant's request.

I have read the application and the replying affidavit. There are no proceedings annexed that could have enabled me to evaluate how the matter has proceeded before the Kilifi Kadhi. This is a 2014 suit and it appears that it has rotated in three different courts namely Mombasa, Malindi and Kilifi. There is no good reason advanced as to why the proceedings should be stayed. The ruling allegedly being appealed against was not annexed or an order extracted. I do not know the effect of the ruling. The court cannot simply conclude that the Kilifi Kadhi has been harsh on the Applicant without any evidence. I do find that the application lacks merit and it is hereby dismissed. Costs shall follow the outcome of the case before the Kadhi.

Delivered and dated at Malindi this **8th** day of **January, 2015**.

**Said J. Chitembwe**

**JUDGE**