



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

SUCCESSION CAUSE NO. 1878 OF 2005

IN THE MATTER OF THE ESTATE OF MIRIAM NJOKI GACHUHI (DECEASED)

JOHN KARUMWA MAINA.....APPLICANT

Versus

SUSAN WANJIRU MWANGI.....RESPONDENT

RULING

1. The applicant has filed a Notice of Appeal challenging the ruling delivered by this Court on 16<sup>th</sup> April 2015 which dismissed with costs his application dated 8<sup>th</sup> July 2005 seeking to have the grant of letters of administration intestate issued to the petitioner Elijah Mwangi Gachuhi on 11<sup>th</sup> June 2004 revoked and/or annulled. With the appeal was the present application seeking the stay of execution of the Court's ruling, or an order to maintain the status quo be made, pending the hearing and determination of the appeal. The applicant stated as follows:-

**“6. THAT the Respondent may go ahead and get execution orders granted on 16<sup>th</sup> April 2015 any time from now and I will suffer irreparable loss and damage as the dispute involves suit property and in the event I may be evicted from the suit property where I live with my family and have known as home for a long period of time and as such render the intended appeal herein nugatory.”**

During the oral hearing of the application his counsel Mr. Kinuthia reiterated the same. This application was served on the respondent who did not file any response, and did not attend the hearing.

2. It is clear that this application has not been lodged with delay. The applicant has to show that substantial loss may result unless the stay is granted (**Mediratta –v- Kenya Commercial Bank & Others [2006]2 EA 194**). This is the reason he states that he stays on the suit land with his family and that he risks eviction therefrom.

3. In this case, however, no order capable of execution was given in the ruling subject of this application. There was an order dismissing the application with costs. It was a negative order, not a positive one. In **Venture Capital and Credit Ltd –v- Consolidated Bank of Kenya Ltd, Civil Application No. 349 of 2003 (CAK)** it was held that where there was no positive order made in favour of the respondent which is capable of execution the application for stay of execution on the ruling is misconceived.

4. In the premises, I dismiss the application with costs.

**DATED and DELIVERED at NAIROBI this 28<sup>th</sup> day of July 2015**

**A.O. MUCHELULE**

**JUDGE**