



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**SUCCESSION CAUSE NO. 1783 OF 1993**

**IN THE MATTER OF THE ESTATE OF WANDIRU KABAIKU MBUTHIA**

**alias WANDIRU KABAIKO MBUTHIA Alias WANDIRU KABAIKU (DECEASED)**

**RULING**

1. The application dated 17<sup>th</sup> February 2015 seeks stay of execution of the ruling made herein on 30<sup>th</sup> January 2015 pending appeal.
2. It is brought at the instance of Priscilla Mweru Muturi, who indicates that she is dissatisfied with the orders made on 30<sup>th</sup> January 2015 and desires to appeal against them. She has attached to her affidavit in support of the application copy of a letter dated 12<sup>th</sup> February 2015 addressed to the Deputy Registrar of the Family Division of the High Court asking for typed copies of the proceedings in the matter.
3. There are two affidavits of service on record indicating service of the application and hearing notice on the respondent. The respondent has not replied to the application.
4. When the matter came up for hearing on 15<sup>th</sup> April 2015, counsel for the applicant did not argue the same, instead he stated that the application was unopposed and left it to me to give orders based on the documents on record.
5. These are proceedings conducted under the Law of Succession Act, Cap 160, Laws of Kenya. Under the said statute, there are no express provisions for a right of appeal from a decision of the High Court in exercise of its original jurisdiction to the Court of Appeal. The Court of Appeal held in *Makhangu vs. Kibwana* (1996-1998)1 EA 16, that there is indeed a right of appeal, meaning that such decisions can be appealed against. In *Rhoda Wairimu Karanja & another vs. Mary Wangari Karanja & another* (2014)eKLR held that as there is no express right of appeal to the Court of Appeal, an appeal to the Court of Appeal from the High Court lies with leave of either the High Court or of the Court of Appeal.
6. In the matter before me, I note from the record, that the applicant has not given any indication as to whether leave has been granted to appeal the orders of 30<sup>th</sup> January 2015 in view of what I have stated in paragraph 5 above. The application before me does not pray for such leave, and there is none pending where such leave is sought.
7. As no leave to appeal has been obtained, or even sought, I do not see the basis upon which I can grant stay of execution of the ruling pending appeal. There is no appeal pending and there is no evidence that one is likely to be filed soon. The only evidence that the applicant evinces an intention to appeal is the letter to the Deputy Registrar dated 12<sup>th</sup> February 2015, annexure PMM2, asking for typed proceedings. Unfortunately, the alleged letter does not bear a court stamp, and there is therefore no proof that it was even lodged at the registry.
8. There cannot be any merit in the application dated 17<sup>th</sup> February 2015 in view of the foregoing. The same is hereby dismissed.

**DATED, SIGNED and DELIVERED at NAIROBI this 18<sup>TH</sup> DAY OF DECEMBER, 2015.**

**W. MUSYOKA**

**JUDGE**