

REPUBLIC OF KENYA

IN THE HIGH COURT AT KAKAMEGA

SUCCESSION CAUSE NO: 133 OF 2010

IN THE MATTER OF THE ESTATE OF BENARD KARANI AYUGU.....DECEASED

AND

MARY GRACE AYUGU.....PETITIONER

VERSUS

ALICE SEBII MINAYO.....OBJECTOR

R U L I N G

The application dated 12/6/2013 seeks orders of stay of execution of the Judgment of this court delivered on 30/5/2013. The application is supported by the affidavit of the applicant sworn on 12th June 2013 and a further affidavit sworn on 27/6/2013 Mr. Osango, counsel for the applicant submitted that the subject matter involves land which is emotive. Counsel urged the court to grant the orders as the respondent has tried to evict the applicant from the suit premises.

Mr. Wekesa, Counsel for the respondent relied on the replying affidavit sworn on 25/6/2013. Counsel submitted that the application have been overtaken by events as the applicant left the suit land.

I have read the application and the two supporting affidavits together with the authority of **MUGAH Vs KUNGA (1988) KLR 748**, I have also read the replying affidavit, I do find that the decision of the court distributed the estate and the applicant became one of the beneficiaries. I also noted that some of the properties that form part of the estate could have been disposed off by the applicant. Although the matter involves land to some extent, it still a succession cause and there is urgent need to safeguard the estate. I am not satisfied that the applicant is in a position to safeguard the estate pending the hearing and determination of the appeal. There is evidence on record that she has sold part of the land.

The applicant has the right to appeal. The respondent and her children were excluded from the estate for quite sometime. The proceedings have been typed and the applicant can pursue her appeal with ease. My view is that the estate will be in good hands if its placed on the administration of the respondent as opposed to the applicant.

I do find that the application dated 16/6/2013 lacks merit and the same is dismissed. I do order that the proceedings herein be given to the applicant as a matter of priority so as to enable her pursue her appeal. There shall be no order as to costs.

Dated, signed and Delivered at Kakamega this 27th day of February 2014

SAID J. CHITEMBWE

JUDGE