



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 62 OF 2012

M A H.....1<sup>ST</sup> APPLICANT

R M A.....2<sup>ND</sup> APPELLANT

VERSUS

H I O.....RESPONDENT

RULING

1. I have been invited in this matter to stay proceedings in **High Court Succession Cause No. 1936 of 2011** pending hearing and determination of the appeal filed herein, on the grounds that the two matters relate to the estate one individual, A H A alias A H A.
2. I called for the court file in **High Court Succession Cause No. 1936 of 2011** for the purpose of perusing the same. The said file was availed to me.
3. The instant suit is an appeal emanating from a decision of the Kadhi in Nairobi **Kadhi's Court Case No. 223 of 2012**. The suit in **Kadhi's Court Case No. 223 of 2012** had been commenced on 25<sup>th</sup> July 2012 by way of Originating Summons. It sought a declaration that the deceased had died a Muslim and he had been survived by his widow, H I O, and children M, A H and K B and A. The application also sought that the named persons be declared to be the rightful heirs of the deceased and the estate be distributed in terms of Sharia Law. A determination was made on 13<sup>th</sup> August 2012 which gave rise to the appeal.
4. **High Court Succession Cause No. 1936 of 2011** relates to the estate of A H A alias A H A. The cause was initiated on 7<sup>th</sup> September 2011. It names H A O, A A H A, I A H A, B A H A and M A H A as the persons who survived the deceased. A grant was made on 30<sup>th</sup> January 2012. It is yet to be confirmed.
5. I am satisfied that the two causes relate to the estate of the same person, who is expressed in both causes as having died on 2<sup>nd</sup> May 2011. There is merit in staying one of the suits to await the determination of the other. **High Court Civil Appeal No. 62 of 2012** is the active suit. I hereby therefore order that **High Court Succession Cause No. 1936 of 2011** be stayed pending the hearing and determination of **High Court Civil Appeal No. 62 of 2012**.

**DATED, SIGNED and DELIVERED at NAIROBI this 30<sup>th</sup> DAY OF May 2014.**

**W. MUSYOKA**

JUDGE

**In the presence of Mr. Kongo advocate for the applicant.**

**In the presence of Mr. Nyoike advocate for the respondent.**