

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 776 OF 2010

IN THE MATTER OF THE ESTATE OF JIMMY MUTUA MULWA (DECEASED)

FAITH MUMBUA MUTUA APPLICANT

VERSUS

FRANCIS MWANZA MULWA RESPONDENT

RULING

1. The application dated **23rd June 2014** is for leave to appeal to the court of appeal. It also seeks stay of proceedings and orders given herein pending hearing and determination of this application.
2. The application is premised on grounds that the applicant is aggrieved by the decision of the court dated **12th June 2014**; the succession Act does not provide for appeals as of right; the appeal raises weighty issues which can only be adjudicated upon by the Court of Appeal and the leave sought

will serve ends of justice and will not in any manner prejudice the applicant.

3. In support of the application is an affidavit deponed by the applicant who reiterates what is stated in the grounds forming the body of the application.
4. The respondent opposed the application. In her affidavit in reply not dated but filed herein on the **4th July 2014** she depones that no appeal has been annexed to establish the weighty issues to be assessed from his application. The application is intended to delay this suit from proceeding with the confirmation of the grant. There are minors in the matter, a delay in confirmation of the grant will be prejudicial to them as they will not be able to finalize their education and the respondent is in the process of disposing off the deceased's property without due regard to the needs of the beneficiaries.
5. Although the Law of Succession Act does not specifically provide for appeals as of right Rule 73 of the Probate and Administration Rules gives the court the inherent power to make orders that may be necessary for ends of justice to be met.
6. The applicant has stated that he intends to appeal against the ruling of the court, he must be given such an opportunity since it is in the interest of justice that he be accorded a hearing in the superior court.
7. Stay of proceedings and order sought was to lapse upon determination of

“this application”. This being the case it will not be necessary to grant such an order as the prayer has been spent.

8. Consequently, I do grant leave to the applicant to appeal to the Court of Appeal as prayed.
9. No orders as to costs.
10. It is so ordered.

DATED, SIGNED and DELIVERED at MACHAKOS this 28TH day of JULY, 2014.

L.N. MUTENDE

JUDGE