



**REPUBLIC OF KENYA**

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

**SUCCESSION APPEAL CAUSE NO. 27 OF 2014**

**IN THE MATTER OF THE ESTATE OF PHINEHAS IKANGU MUIGAI (DECEASED)**

**ESTHER WAMBUI KAMAU.....1<sup>ST</sup> APPELLANT**

**ESTHER L. NJERI KAMAU.....2<sup>ND</sup> APPELLANT**

**PETER KINUTHIA KAMAU.....3<sup>RD</sup> APPELLANT**

**LUCY WANJA KAMAU.....4<sup>TH</sup> APPELLANT**

**NANCY MUTHONI MAINA.....5<sup>TH</sup> APPELLANT**

**GRACE WANJIKU KAMAU.....6<sup>TH</sup> APPELLANT**

**AND**

**NAOMI WANJIRU IKANGU.....RESPONDENT**

Being an appeal from the judgment of Hon. J.W. Onchuru, Acting Principal Magistrate, dated and delivered on 2<sup>nd</sup> day of April 2014.

**RULING**

1. Under **section 48(1)** of the *Law of Succession Act (Cap 160)* a subordinate court has jurisdiction to handle and determine disputes under the Act, except for disputes under **section 76**, where the gross value of the estate does not exceed Kshs.100,000/=.

2. I have looked at the judgment of the Acting Principal Magistrate relating to the estate of the deceased PHINEHAS IKANGU MUIGAI. The dispute was over the sharing of the estate to the beneficiaries. The estate comprised several properties. NDUNYU CHEGE PLOT NO. 16/493 was said to value Kshs.6,670,000/=; plot No. 82/4953 at MAKONGENI was said to be valued at Kshs.2.5 Million; and LOC.16/NDUNYU CHEGE/274 was valued at Kshs.4 Million. The applicants were not satisfied with the shares they got at the confirmation of the grant and filed this appeal. Jurisdiction was not one of the grounds raised in the Memorandum of Appeal, but will certainly be an issue. On this alone, I allow the stay of the execution of the judgment of the court to enable the appeal to be heard and determined.

3. I do not want to say that the dispute by the beneficiaries (who are members of the family of the deceased) is over land. If the application is not allowed, the plots will be shared out and probably disposed. This would render the appeal nugatory, leave alone exposing the applicants to substantial loss.

**DATED and DELIVERED at NAIROBI this 21<sup>st</sup> July 2014**

**A.O. MUCHELULE**

**JUDGE**