



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL APPEAL NO. 16 OF 2006

MOHAMED ABDILLAH MOHAMED BAASBA

aka ABDULLAHI MOHAMED BAASBA.....APPELLANT

VERSUS

SAADA ISLAM AWADH.....RESPONDENT

AND

1. FEISAL ABDILLAHI MOHAMED BAASBA
2. SWAFIYA ABDILLAHI MOHAMED BAASBA
3. OMAR ABDILLAHI MOHAMED BAASBA
4. FAHIMA ABDILLAHI MOHAMED BAASBA
5. SAID ABDILLAHI MOHAMED BAASBA.....INTERESTED PARTIES

RULING

Before the court are two applications for consideration as follows:

1. **Notice of Motion dated 20th November, 2013** seeking *inter alia* the following orders:

“THAT (i) SAID ABDILLAHI MOHAMED BAASBA (ii) SWAFIYA ABDILLAHI MOHAMED BAASBA (iii) OMAR ABDILLAHI MOHAMED BAASBA (iv) FAHIMA ABDILLAHI MOHAMED BAASBA (v) FEISAL ABDILLAHI MOHAMED BAASBA being the biological children of the late ABDILLAHI MOHAMED BAASBA and heirs entitled under the law to benefit and inherit jointly with the Applicant herein be joined in this appeal which is pending for hearing and determination.”

2. **Notice of Motion dated 30th April, 2014** seeking *inter alia* the following orders:

“1. Rent and/or income collected from the estate of the late ABDILLAHI MOHAMED on plot No. 78411 Lamu currently being collected by the respondent/appellant herein be deposited in a joint interest earning account

pending the hearing and determination of the appeal.

2. This Honourable court be at liberty to grant any reasonable and just order regarding the estate of the late ABDILLAHI MOHAMED.”

3. The costs of this suit be borne by the applicant/respondent.”

On 30th October, 2014 when both applications came up for hearing **MS. FWAYA** for the respondent indicated that they had no objection to the prayer contained in the Notice of Motion dated 20th November, 2013 being granted. I therefore allow prayer (2) of that Notice of Motion. Costs in the cause.

The application dated 30th April, 2014 was disposed of by way of written submissions. This appeal emanates from a Succession Cause which was heard by the Kadhi Court in Lamu. The estate in issue is that of the late **Mohamed Abdullah Mohamed Baasba aka Abdullah Mohamed Baasba** who died on 14th July, 2004 at Lamu and was survived by ten (10) children. An issue arose regarding the distribution of the estate of the deceased. **HON. ISMAIL A. ABDALLAH** Kadhi delivered a ruling on 12th January, 2006 in which he made (amongst others) the following order:

“The defendant to pay rent from June, 2004 to date and upto finalization of this matter.”

The defendant was aggrieved by this order and filed this present appeal. The appeal is pending and is yet to be heard. The respondent in reliance on the decision of the Kadhi seeks orders that all rental income collected by the appellant be deposited in court. I do not agree with counsel for the appellant that by virtue of an appeal having been filed the decision of the Kadhi is deemed as stayed. That is not the correct position in law. A stay can only exist if it has been applied for and an order for stay obtained. Without an order of stay the decision of the Kadhi remains legal, binding and enforceable notwithstanding the filing of the appeal. I have carefully considered the submissions filed by both parties. This court would not want to in any manner preempt the appeal nor would I want to make orders which may render the appeal nugatory. For good order it is better that the appeal be heard and determined and final orders issued. Any amounts due from the rental to the respondent will be apportioned and appropriate orders made. I therefore disallow the present application. Costs in the cause.

Dated and Delivered in Mombasa this 27th day of November, 2014.

M. ODERO

JUDGE