



REPUBLIC OF KENYA

High Court at Mombasa

Succession Cause 151 of 1999

IN THE MATTER OF: THE ESTATE OF THE LATE UJAMBEN

KANJI NARANJEE LAKHANI ALSO

KNOWN AS UJAMBEN LAKHANI – DECEASED

BETWEEN

NITIN MANGALDAS LAKHANI.....APPLICANT

AND

1. JAYANTILAL PITAMBERDAS NATHWANI

2. MANJUBEN JAYANTILAL SHAH

3. VIBHABEN ARUNBHAI SHAH

4. JAIRAJ (SUNIL) JAYANTILAL NATHWAN.....RESPONDENTS

RULING

By a Notice of Motion dated 25th April, 2012 the applicant sought the following orders:

“1. THAT all further proceedings in this cause be stayed pending the hearing and determination of the intended appeal to the Court of Appeal against the whole of the ruling delivered by Lady Justice G. Nzioka, herein on 16th February, 2012.

2. **THAT costs of this application be provided for.”**

The application was supported by the affidavit of **KISHORE NANJI** Advocate. The Interested party **NITIN MANGALDAS LAKHANI** opposed the application by way of a replying affidavit sworn on 29th May, 2012.

On his part the applicant submits that although the court allowed them twenty one (21) days within which to file their formal application, they were unable to do this in time due to the fact that there was a delay in provision of the typed ruling. He argues that if the application dated 30th November, 2000 proceeds to hearing then their intended appeal may be rendered nugatory.

MR. KHAGRAM Advocate made oral submissions on behalf of the applicant whilst **MR. C. B. GOR** and **MR. A. B. SHAH** submitted on behalf of the respondents. I have given careful consideration to the submissions of both counsels. Order 42 of the Civil Procedure Rules provides for the factors to be taken into account by the High Court when considering an application for stay.

In her ruling Hon. Nzioka declined to make any finding on *locus standi* and instead directed that it would be determined at the hearing of the application dated 30th November, 2010. This allows the applicant the opportunity to ventilate his submissions in that application. I fail to see what loss would be suffered.

I note that this is a very old matter and it is desirable that litigation come to an end one way or another. A stay at this point would only further serve to slow down the progression of this case. I am not persuaded of the merits of this application for stay. The same is hereby dismissed. Costs in the cause.

Dated and delivered at Mombasa this 25th day of February, 2013.

M. ODERO

JUDGE

In the presence of:

Mr. Khagram for 2nd and 3rd Respondents

Mr. Omollo h/b Mr. Gor for Applicant

Court Clerk Mutisya