

REPUBLIC OF KENYA

High Court at Embu

Civil Appeal 13 of 2010

CHARLES NDWIGA KANYERYA..APPELLANT/APPLICANT

VERSUS

AUGUSTINE MUTURI MAIRANI.....1ST RESPONDENT

MWANIKI MAIRANI2ND RESPONDENT

(An Appeal from the Judgment of D.A. ONYANGO– Senior Resident Magistrate sitting at RUNYENJES in Succession cause No. 26/2009 delivered on 11/2/2010).

R U L I N G

This is the application for Review filed by way of Notice of Motion dated 24/4/2013 and filed on 25/4/2013. The Applicant has listed 14 grounds in support of his application. A number of these grounds do not reflect the true position on the record. And he is advised to peruse the record before making scandalous statements which are not substantiated. In particular is his ground No.9.

It must be pointed out to the Applicant that an application for leave to file appeal out of time does not amount to leave being granted and appeal being filed. The many papers he has filed herein are not confirmation that an appeal has been filed. It is true as per his submission No.(e) that the Court of Appeal is supreme to the High Court and I salute him for reminding this Court about that supremacy. The position in law is that an appeal in itself does not **operate** as stay of execution. An application for stay of execution must be made which application he has not made because he has not yet filed any appeal in the Court of Appeal. I am stating all these things so that the Applicant can seek legal advice and file proper applications before the Court.

Having heard this appeal and considered the issues I understand that the issue of land and succession in Embu are so emotive. These are the issues herein. The parties herein are brothers fighting over their father's estate. The Applicant herein would wish to have the Judgment of this Court overturned which right the Law grants to him. And for him to operate within the Law he ought to formally apply for stay of execution. I do appreciate that he is unrepresented.

From a perusal of the record herein I do not find any error to make me interfere with the Ruling of 16/4/2013. However because of the nature of this matter and the acrimony that exists between the parties herein I would wish to invoke the provisions of Order 42 rule 6 (3) Civil Procedure Rules and grant stay of the decree and any orders emanating therefrom for 21 days. Within the 21 days the Caution on the disputed parcels shall remain in place. Secondly the Applicant will have time to reorganize himself and move the Court in the proper manner. If he will not do so then the orders of stay shall be vacated.

Costs in cause.

DELIVERED, DATED AND SIGNED AT EMBU THIS 14TH DAY OF MAY 2013

**H.I. ONG'UDI
J U D G E**

**In the presence of:-
Applicant**

Both Respondents

Njue – C/c