

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO. 158 OF 2006

IN THE MATTER OF THE ESTATE OF IRUNGU MURAGURI - (DECEASED)

TERESA WAMUYU IRUNGUAPPLICANT

VERSUS

AGNES NJERI KINYUA RESPONDENT

RULING

The subject matter of this ruling is the Motion dated 31st October, 2011 in which Teresa Wamuyu Irungu, the applicant herein, has sought for an order of stay of execution of this court's judgment passed on 24th October, 2011, pending the hearing and determination of the applicant's intended Appeal. The Motion is supported by the affidavit of the Applicant. Agnes Njeri Kinyua opposed the motion by filing the replying affidavit she swore on 21st November, 2011. When served with the replying affidavit, the applicant filed a further affidavit in response.

It is the applicant's submission that unless the order for stay is given, her intended appeal will be rendered nugatory yet the same is arguable with high chances of success. The Respondent raised one Preliminary point of law which is to the effect that there is no intention to challenge this court's judgment delivered on 17th September, 2011. The Respondent pointed out that the notice of appeal relate to the judgment of this court of 24th October, 2010 which has not been challenged. This fact was shown to the applicant but she was adamant that the Motion is properly before this court. In fact this court gave her 30 days to seek the services of an advocate to help her correct the anomaly but she did not seem to care.

I have carefully considered the oral submissions presented by both sides. I have also taken into account the grounds set out on the face of the motion plus the facts deponed in the affidavits filed in support and against the motion. There is no doubt that this court made orders confirming the grant issued jointly to both the parties vide its order of 17th September, 2010. There is no denial that the applicant has not filed a notice of appeal to intimate her intention to appeal against the order of confirmation of grant. What the applicant has done is to file a notice of appeal against this court's decision of 24th October, 2011. The order made on the aforesaid date was basically meant to give effect to the order of confirmation of grant which has not been challenged. That cannot stand on its own without bringing on board the order confirming the grant. The order of stay sought herein will not stop the execution of the order of confirmation of grant which has not been challenged. The application for stay of execution therefore lacks the substratum hence the motion has no merit.

In the end, I find no merit in the Motion dated 31st October, 2011. The same is dismissed. Since this dispute involves members of the same family, I direct that each one of them meets her own costs.

Dated, signed and delivered this 23rd day of August, 2013.

J.K. SERGON

JUDGE

In open court in the presence of Miss Kahinga holding brief for

K. Wachira for the Respondent

Applicant in person