



**IN THE MATER OF THE ESTATE OF: SAMUEL NDALO WAMBARE
.....DECEASED**

AND

**IN THE MATTER OF AN APPLICATION BY: JOYCE PENINA
ADHIAMBO.....PETITIONER**

VERSUS

**FRANCIS OUMA OUKO
.....OBJECTOR**

RULING

The applicants application filed on 27th January 2012 prays for the following orders:-

1. **That this application be certified urgent and be heard ex-parte in the first instance.**
2. **That pending the hearing and determination of this application, there be stay of execution of the Decree herein.**
3. **That pending the hearing and determination of appeal filed by the applicant against the entire Judgment and Decree herein, there be a stay of the execution of the Decree.**
4. **That the costs of this application be in the cause.**

The same is supported by the affidavit of **Francis Ouma Ndalo**. It is opposed by the respondent through her affidavit sworn on 10th February 2012.

The provisions in which the stay sought under Order 42 (6) are very clear, namely that unless **42 (6) (2) No Order of stay of execution shall be made under Sub Rule 1**

- (a) **The court is satisfied that substituted loss may result to the application when the order is made and that the application has been made without unreasonable delay and**
- (b) **Such security as the court orders for the due performances of such decree order as may ultimately be binding on him has been given by the applicant.**

The applicant has first of all conceded that there is no appeal pending. He said that he shall still seek further directions from the Court of Appeal. Taking into consideration the circumstances surrounding this case and the litigation history it has had, I don't find that the applicant shall suffer any loss in the event that stay is not granted. On the contrary it is the respondent who stands to continue suffering if stay is granted.

I do hold that the applicant's application is unmeritorious and I dismiss the same with cost to the respondent.

Dated, signed and delivered at Kisumu this 29th of February 2012

H. K. CHEMITEI
JUDGE

In the presence of:

.....**Advocate for Applicant**

..... **Advocate for Respondent**

HKC/aao