

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NO.437 OF 2005

IN THE MATTER OF THE ESTATE OF MARY NJERI KURIA (DECEASED)

JECINTA NJERI KURIA.....1ST
PETITIONER

RUTH WANJIRU KAMAU.....2ND
PETITIONER

VERSUS

FRANCIS KARIUKI KURIA.....1ST
OBJECTOR

PATRICK KIMANI KURIA.....2ND
OBJECTOR

RULING

The grant of probate of written will was issued to the executors on 29th March, 2011 after this court (Koome, J as she then was) dismissed the applicant's objection and cross-petition and after two attempts to stay the orders of dismissal failed.

Undeterred, the applicant has now brought an affidavit to protest the confirmation of grant which is pending on the ground that application for confirmation of the grant is premature as there is a pending appeal in the Court of Appeal challenging the judgment in question.

In reply, the 2nd executor has deposed that without a stay, nothing stops the confirmation; that no grounds have been advanced to warrant the orders sought.

I have considered the arguments as well as written submissions. The judgment against which the notice of appeal was filed in this court was delivered on 10th June, 2009 and the said notice of appeal filed on 18th June, 2009. Nearly three years later, no steps have been taken to file the appeal.

Learned counsel for the applicant has annexed four (4) letters applying for judgment and proceedings. One of the letters was written by the applicant's erstwhile advocates on 1st July, 2009 immediately after the judgment was delivered. The other three were written in quick succession on 14th March, 2011, 23rd March, 2011 and 4th May, 2011. In other words, the applicant did not find the need or urgency in pursuing the appeal until all options appeared exhausted. To obtain proceedings should not take a vigilant litigant three (3) years. But more significantly, a notice of appeal filed three years ago cannot be a ground of stopping the executors from proceeding to have the grant confirmed.

This application is clearly an abuse of the court process. It is dismissed with costs.

Dated, Signed and Delivered at Nakuru this 24th day of February, 2012.

W. OUKO
JUDGE