



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
SUCC. CAUSE NO. 166 OF 2000

IN THE MATTER OF THE ESTATE OF THE LATE M'NDEGWA M'MUKIRA (DECEASED)

MUGAMBI MUKIRAPETITIONER/
APPLICANT

VERSUS

FREDRICK MARANGU
NDEGWAOBJECTOR

RULING

Judgment was delivered in this matter on 29th October 2008. In that judgment, costs were awarded to the objector Fredrick Marangu Ndegwa to be paid by the petitioner Mugambi Mukira. When the objector's bill of costs was taxed by the taxing master of this court, the objector's counsel's brief was held by Mr. B.G. Kariuki Advocate. When the ruling of that taxation was delivered on 9th December 2009, the objector was represented in court by his counsel. The petitioner now by a Chamber Summons dated 19th February 2010 seeks stay of execution of those costs. In my view, that application by the prayer therein is defective. The prayer of that Chamber Summons is:-

“That this Honourable Court be pleased to stay execution of the orders/decision as to the award of costs in High Court Succession Cause No. 166 of 2000 pending hearing and determination of this application.”

Looking at that prayer it becomes clear that the stay which is sought is until the hearing of the Chamber Summons. The Chamber Summons was heard by me on 23rd February 2010 when interim orders of stay were issued. On 28th February 2011 the matter was heard *inter partes*. Since the Chamber Summons has now been heard *inter partes*, stay cannot be extended beyond that period going by its prayer. Also looking at the application, the petitioner only seeks to stay the award of costs and not the whole of the judgment of 29th October 2008. As held in the case **Francis Kabaa vs. Nancy Wambui & Ano**. Civil Application No. 298 of 1996 [113/96 UR] by the Court of Appeal there cannot be stay of costs. The court stated thus:-

“In any case, even if that were so, the appellant, if he succeeds in his appeal, would be refunded his costs. Furthermore, we do not think that stay can be granted in respect of costs.”

It is for the above reasons that I dismiss the Chamber Summons dated 19th February 2010 with costs being awarded to the objector Fredrick Marangu Ndegwa.

Dated, signed and delivered at Meru this 13th day of April 2011.

**MARY KASANGO
JUDGE**