



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE NO. 53 OF 2007

IN THE MATTER OF THE ESTATE OF

**MOSES GATUNDU MUGODECEASED
AND**

**NGUNJIRI WAMBUGU MUNENE
FRANCIS KIBUE WAMBUGU**

.....OBJECTOR/APPLICANT

VERSUS

MIRIAM WANJIKU KINYUA.....PETITIONER/RESPONDENT

RULING

Ngunjiri Wambugu, Munene Wambugu and Francis Kibue Wambugu, the objectors/Applicants herein, took out the summons general dated 14th February 2011 in which they applied for an order of stay of execution of this court's judgment delivered on 7th May 2010 pending the hearing and the determination of the intended appeal. The summons is supported by the affidavit of Ngunjiri Wambugu sworn on 17th February 2011. Miriam Wanjiku Kinyua, the Petitioner/ Respondent herein, filed grounds of opposition to resist the summons.

The applicants argued before this court alleging that unless the order for stay of execution is given they would suffer substantial loss in that they will have been evicted from the suit land before the appeal is heard and determined. The Respondent urged this court not to grant the order because the Respondents only filed the application after an inordinate delay.

I have considered the rival submissions plus the material placed before me. The history behind this summons started when the Respondent herein applied to be given letters of administration intestate in respect of the estate of Moses Gatundu Mugo alias Musa Gatundu alias Gatundu s/o Mugo, deceased after being cited by one Ngunjiri Wambugu. A temporary grant was made to the Applicants and the Respondents jointly. The Respondent applied for the grant to be confirmed. The Applicants filed a joint affidavit of protest. The dispute was heard and in its judgment delivered on 7th May 2010, this court dismissed the protest and confirmed the grant on condition that the parcel of land known as L.R. no. Muhito/Munyu/556 should be shared in equal proportion between the Respondent and her sister Lydia Wamuyu Mwathi. The Applicants felt aggrieved hence they have filed a notice of appeal to express their intention to challenge the judgment on appeal before the court of Appeal. The Applicants are now beseeching this court to halt the execution of the judgment pending appeal. Having anxiously considered the grounds argued in support of the application, I am convicted that if the order of stay is denied the

Applicants are likely to be evicted to pave way for the Respondent and her sister to take occupation of the land in dispute. That in my view is a substantial loss on the applicant's part.

I grant orders in terms of prayer 2(ii) of the summons general dated 14th February 2011. costs shall abide the outcome of the intended appeal.

Dated and delivered this 29th day of July 2011.

J.K. SERGON
JUDGE

In open court in the presence of Mr. Gichohi holding brief G. K. Kibira for the Applicant and Miss Keli for the Respondent.