



SUCCESSION
Stay pending appeal
REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 167 OF 1993

IN THE MATTER OF THE ESTATE OF M'ITWAMWARI M'RAJI (DECEASED)

JULIUS GATOBU M'ITWAMWARI PETITIONER

VERSUS

ESTHER NKATHA M'ARIMI OBJECTOR

RULING

By this court's judgment, of 22nd October 2010, the court found that Julius Gatobu M'Itwamwari was not a son of the deceased and was therefore not entitled to a share of the deceased estate. The court made a finding that Julius had fraudulently obtained a grant in this matter which he had later confirmed. The court in that judgment cancelled the titles registered in the name of Julius and ordered that the deceased property be registered in the names of the two daughters of the deceased whom one of them is Esther Nkatha M'Arimi. Julius on 3rd November 2010 filed a notice of appeal in the Court of Appeal against this court's judgment. By his application dated 14th December 2010, Julius seeks stay pending his appeal before the Court of Appeal. Order 42 rule 6 (2) provides the conditions which are to be met by an applicant seeking stay pending appeal. That rule is in the following terms:-

“(2) No order for stay of execution shall be made under subrule (1) unless-

(a) the court is satisfied that substantial loss may result to the applicant unless 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 performance of such decree or order as may ultimately be binding on him has been given by the applicant.”

Julius deponed in his affidavit in support of his application that Esther Nkatha M'Arimi the objector herein had threatened through notice to evict him from the suit property. He however did not annex such notice of eviction in his affidavit in support. He further stated that he had extensively developed his portion of land. Esther in opposing the application stated that the applicant is intent on denying her the enjoyment of the fruits of her judgment. She stated that Julius occupies half of the land whilst she occupies the other half. That half that she occupies is the portion she wishes to be registered as an owner following the judgment of this court. She denied that she intends to evict Julius. Bearing in mind the finding made by this court by its judgment of 22nd October 2010, where the court found that Julius by use

of false information petitioned for grant in this estate without informing Esther a daughter of the deceased. Also considering that Esther has been wrongly been kept out of ownership of her father's estate since his death in May 1995. I find that Julius is not deserving of the orders that he seeks. Julius has also failed to show that he will suffer substantial loss if stay is not granted bearing in mind that Esther wishes to be registered in her name the half of her deceased's father's land. I find that the summons dated 14th December 2010 is without merit and is dismissed with costs being awarded to Esther Nkatha M' Arimi.

Judgment by:-

MARY KASANGO

JUDGE

Dated, signed and delivered at Meru this 21st day of July 2011.

J. LESIIT

JUDGE