

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
Succession Cause 475 of 1998

IN THE MATTER OF THE ESTATE OF KIPSANG KANDIE (DECEASED)
MARY KIMOI SANG.....PETITIONER

VERSUS

CHARLES K. KANDIE.....RESPONDENT

RULING

In my judgment of 27th April 2010, I decreed the piece of land known as **Title No. Baingo/Ravine/102/107** (the suit land) to Mary Kimoi Sang (the respondent) the widow of the deceased in this cause. Being dissatisfied with that decision Charles K. Kandie, one of the objectors whom I will hereinafter refer to as the applicant, has filed a notice of appeal evincing his intention to appeal to the Court Appeal against my decision. On 20th May 2010 he filed an application under **Section 47** of the **Law of Succession Act** and **Rules 49** and **73** of the **Probate and Administration Rules** and sought a stay of execution pending the determination of his intended appeal. He claims if stay is not granted he will be evicted from the suit land and thus lose his home of twenty seven years.

As I said in my impugned judgment, the applicant and his brother Francis Kandie who also testified in this cause conceded that they did not pay a penny for the suit land. The respondent's late husband solely paid for it. They stake their claim to the suit land on its original registration in their late father's name. After their father's death they allegedly allowed the piece of land to be registered in the name of their late brother in trust for them. Other than their word, there was no independent evidence to support that claim. As the objectors were at that time adults I found that incredible.

It is not in dispute that John Kandie, one of the deceased's brothers, did not contest the respondent's claim to the suit land. At the request of the respondent, he voluntarily vacated the suit land and did not participate in these proceedings. The applicant's other brother Francis Kandie, having not filed a notice of appeal, has thrown in the towel. So it is only the applicant who is persisting on continuing to occupy the suit land. It is on record that Francis Kandie conceded in cross examination that the deceased's brothers have another piece of land elsewhere. It is therefore false for the applicant to claim that he will be rendered destitute if stay is not granted.

The applicant has not claimed that the respondent is likely to dispose of the suit land before his intended appeal is determined. If his appeal is allowed he will get his portion of the suit land. So his appeal will not be rendered nugatory.

For these reasons I find no merit in this application and I accordingly dismiss it with costs.

DATED and DELIVERED at Nakuru this 8th day of July 2010.

D. K. MARAGA

JUDGE.