

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Succession Cause 696 of 2006

IN THE MATTER OF THE ESTATE OF KIMANI NYAITUGA (DECEASED)

RULING

In my judgment of 13th May 2010, I distributed the estate of the late Kamani Nyaituga (the deceased). John Maina Chege the objector, being dissatisfied with that distribution has filed a notice of appeal evincing his intention to appeal against it. He has now applied under **Section 47** of the **Law of Succession Act** and **Rules 49** and **73** of the **Probate and Administration Rules** for stay of execution pending the filing and determination of his intended appeal.

The application is based on the ground that if stay is not granted the objector and his family will be dispossessed of the 2.5 acres portion they have and are occupying and thus be denied a source of their livelihood.

The application is strongly opposed by Kamau Komu Mukera (the respondent), to whom I decreed the 2.5 acres portion which the objector wishes to continue occupying.

I have considered the application. It is not true as the objector claims that if stay is not granted he together with his family will be deprived of a source of their livelihood. Besides his share of the 12 acres portion decreed to his family, he has 2.5 acres of the disputed piece of land. In the circumstances I find no merit in his application and I accordingly dismiss it with costs.

So that the objectors appeal is not rendered nugatory, I direct that the issue of title deeds to the objector and the respondent for the subdivisions of the 5 acres disputed portion be held in abeyance until the objectors appeal to the Court of Appeal is heard and determined. Save for this direction as I have said, I dismiss the objector's application with costs.

DATED and DELIVERED this 6th day of July, 2010.

D. K. MARAGA

JUDGE.