

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI

MILIMANI LAW COURTS
Civil Appeal 80 of 2009

NAOMI WAMBUI NDICHUAPPELLANT

V E R S U S

GEORGE NGANGA NJUKIRESPONDENT

R U L I N G

The Applicant was aggrieved by the decision of the subordinate court in not providing for her during the confirmation of the grant in the succession cause at Kiambu and has preferred an appeal to this court. In doing this she is exercising her undoubted right of appeal. She seeks stay of execution of the decree pending the hearing and determination of the appeal. The Respondent's response to the application is that the Applicant should have first sought stay in the subordinate court; that she should not have directly come to this court for stay without having good reasons which she should share with the court. He relied on the decision in **Kwa Hola Pharmacy –Vs- Copy Cat Coast Ltd. [2002] 2 KLR 269**. Indeed no reason was given why the Applicant did not seek stay before the court that made the decision subject of the appeal.

The present application was stated to be brought under **Order 41 rule 4** of the **Civil Procedure Rules** and **section 3A** of the **Civil Procedure Act**. It is notable that inherent powers of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of process of the court are secured by **Rule 73** of the **Probate and Administration Rules** of the **Law of Succession Act (Cap. 160)**.

If **Order 41 rule 4** is applicable, the Applicant has to demonstrate the application was brought without delay, that she will suffer substantial loss if the application is not granted and she has to offer security of due performance of such decree a order as may ultimately be binding on her. The decision being appealed from was rendered on 11th September, 2009. The application was filed on 20th August 2010, about one year later. There was no explanation of the delay. The supporting affidavit did not indicate the loss that may be occasioned if the application is not granted, and no security was offered.

The application lacks merits and is dismissed with costs.

DATED AND DELIVERED AT

NAIROBI

THIS 30TH DAY OF SEPTEMBER 2010

A. O. MUCHELULE

J U D G E