



Rule 49 & 73 Probate and Administration Rules Cap 160
Application for Stay of Execution of Judgment

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
SUCCESSION CAUSE NO. 50 OF 1996

IN THE MATTER OF THE ESTATE OF ELIJAH M'IMWANYARA NTHAI.....DECEASED

NAOMI KAREGI M'IMANYARA.....PETITIONER/APPLICANT

VERSUS

M'INOTI NTHAI.....OBJECTOR/RESPONDENT

RULING

The application under consideration has been brought by the objector by way of summons under Rules 49 and 73 of Probate and Administration rules. It seeks two prayers one an order for stay of execution judgment delivered on 22nd October 2010 and an order of temporary injunction against the petitioner.

The grounds on which the application is founded are cited on the face of the application but can be summarized as follows;

That the Objector Applicant is aggrieved by the judgment of the court and has filed a notice of appeal; that the appeal has high chance of success and that if the stay is not granted the appeal will be rendered nugatory.

The application is also supported by an Affidavit sworn by the Objector of even date. The gist of the affidavit is that the objector has already filed a notice of appeal from the decision of this court in which judgment was given on 22nd October 2010, confirming the Grant herein and transferring the suit land to the Petitioner absolutely. The deponent avers that he has lived on the suit land for over 20 years and has developed it extensively and that therefore the said judgment should be stayed otherwise he stands to suffer irreparable loss and damage.

The Petitioner is represented by Mr. Kirima advocate who was in court when the matter was confirmed for hearing. However when the matter was called out, Mr. Kaumbe for the Objector informed the court that Mr. Kirima had opted to proceed to the lower court for another matter. He left no one to hold his brief. Mr. Kirima also had an application filed one day before the instant one. In the application the Petitioner was applying for an injunction to restrain the objector from interfering with the suit land which, it is urged, is under the Petitioner's occupation. Besides, judgment has already been given transferring the suit land to the Petitioner absolutely.

The judgment sought to be stayed in this application was given after a full hearing of the Petition in which viva voce evidence was taken by my learned sister before she wrote a considered judgment.

The Objector has not annexed a Memorandum of Appeal and therefore I cannot presume what grounds he

will raise in his appeal. My learned sister's judgment is very clear that the Petitioner's husband was the registered owner of the suit land. After his death he was survived by his wife, the Petitioner, and three daughters.

The learned judge observed that the only reason the Objector cross-petitioned in this cause was because the Petitioner had not given birth to a son and that therefore there was no heir to his brother's land.

The Objector has to show that he has an arguable appeal. I find no demonstration to that light.

The objector has to show what loss or damage he stands to suffer. He has not demonstrated any, if at all, he seems to have trespassed into the Petitioner's land after hearing of this petition. The application has in my view no merit and is dismissed accordingly.

Dated this 3rd day of December 2010

LESIT, J.

JUDGE

3rd December 2010

Coram:

Lesit J.....JUDGE

Kirimi/Mwonjaru.....Court clerks

Mr. Kirima.....For Petitioner

Mr. Kaumbe.....For Objector

Ruling was read, signed and delivered in open court his 3rd December 2010.

LESIT

JUDGE