

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

Succession 72 of 2004

IN THE MATTER OF THE ESTATE OF ROBERT WAHOME NDEGWA – DECEASED

JULIET WANGUI NDEGWA PETITIONER/APPLICANT

Versus

FRANCIS JAMES NDEGWA OBJECTOR/ RESPONDENT

RULING

Judgment was delivered by this court on 21st April 2008 in this matter directing the distribution of the estate of the deceased to the beneficiaries. An application for stay of execution was filed by Francis James Ndegwa. In the courts ruling a conditional stay was issued. The court stayed any transfer of immovable properties and motor vehicles of the deceased estate. The deceased estate had one immovable property in Buruburu Estate Nairobi from which rent is collected. The motor vehicles owned by the estate are public service vehicles which bring in an income. Over and above that the estate had various bank accounts. The evidence came out clearly at the hearing was that Francis James Ndegwa was collecting the rent of the Buruburu house and the proceeds of the public service vehicles. This had been the case since the death of the deceased. Similarly the applicant Juliet Wangui Ndegwa had benefited from the money held in the various bank accounts. There were balances in credit still remaining in those accounts. The applicant and the respondent are husband and wife and are the parents of the deceased. They have had a tug of war over their deceased son's estate. The respondent Francis James Ndegwa is appealing against the judgment of this court. He however has not obtained stay of execution. In the application of Juliet Wangui Ndegwa dated 17th December 2008 she seeks from the court an order that the deputy registrar of this court be authorized to co-sign with her the bank documents to enable her access the funds which she needs to pay for her medical care which she is undergoing. Having had the benefit of hearing and seeing the parties in this case as they gave evidence I did note that the applicant was indeed sickly following a road traffic accident. It is therefore not surprising to see that she has requested for money to be able to cater for her medical care. The respondent has opposed the application on the basis that he had an appeal pending. He further deponed that the applicant is in receipt of monthly pension of Kshs. 17,000. There is no evidence of that pension being received by the applicant. The respondent in objecting to the application he fails to state that he himself is benefiting from the rent income of the Buruburu house and the proceeds of the public service vehicles. In my view the application is merited. I grant the following orders:-

- 1. That the Deputy Registrar of this court is hereby authorized to sign / execute the necessary bank forms relating to the bank account of this estate instead of Francis James Ndegwa to effect the judgment of this court of 21st April 2008.***
- 2. The costs of this application is awarded to Juliet Wangui Ndegwa.***

Dated and delivered this 10th day of February 2009.

MARY KASANGO

JUDGE