



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NYERI

Succession Cause 2 of 1993

IN THE MATTER OF THE ESTATE OF MUTUOTA MUCHUI.. DCD

AND

MARGARET WACHEKE MUTUOTA..... PETITIONER

VERSUS

JANE WANJIRU WATORO..... OBJECTOR

RULING

This court by its judgment dated 16th November 2007 granted orders to the effect that parcel No. Loc 14/Kairo/381 be divided in equal portions amongst the five daughters of the deceased. The applicant Margaret Waceke Mutuota who was an objector in this succession case was dissatisfied with that judgment and filed a Notice of Appeal. During the submissions before court the applicant's advocate stated that an appeal has now been filed being Appeal No. 2 of 2008. Pending the hearing and the determination of that appeal the applicant has filed an application by summons dated 21st December 2007. In that application she seeks

stay of the judgment of 16th November 2007. The application is based on the ground that the applicant's four children and her grandchildren live and cultivate on the suit land. That if the judgment delivered herein was executed it would have a disruptive effect on those settlements of her children, grandchildren and herself. The applicant deponed that she and her children had heavily invested in their livelihood on that parcel of land. The respondents filed a Replying Affidavit in which they stated that before the death of their father the applicant had denied them to receive or to utilize about 200 (two hundred) tea bushes which are on that parcel of land. The respondents were of the view that the application is actuated by malice and was brought with ill motive by the applicant. That the intention of the applicant is to exclude the respondent from benefiting from the proceedings of the cash crop. They further deponed that the applicant is wantonly wasting coffee bushes on the portions that bring to the respondent. They stated that the land had been surveyed and their respective portions had been delineated.

I have considered the submission of each side. It is clear that on the grant being confirmed the suit property

was registered in the names of all the daughters of the deceased. This fact is also conceded by the objector. The objector accepts that each beneficiary was given their portion. With that in mind it would be unjust to grant wholesomely the orders that are prayed for by the applicant. I believe the best decision would be that each beneficiary be entitled to make use of their own parcel of land but that a prohibition

do issue on that land until the appeal is determined. Accordingly I grant the following orders:-

1. That a prohibitory order do issue over

Parcel No. Loc 4/Kairo/381 until Civil

Appeal No. 2 of 2008 is hereby determined.

2. Each party is granted liberty to apply for

further orders in respect of the prohibitory

Order hereby issued.

**3. The cost of the Notice of Motion dated 21st
2 of 2008.**

December 2007 shall abide with Appeal No.

Dated and delivered at Nyeri this 18th day of June 2008.

MARY KASANGO

JUDGE