

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

Civil Appeal 85 of 2007

ROSEMARY NDERE KANGI.....1ST APPELLANT

ANN IGOKI.....2ND APPELLANT

TERESIA WANJA.....3RD APPELLANT

VILGINIA RWAMBA.....4TH APPELLANT

TASIANA KINA.....5TH APPELLANT

MARY WAWIRA.....6TH APPELLANT

MUSA MWANIKI.....7TH APPELLANT

VERSUS

FRANCIS NJERU KOGI.....RESPONDENT

RULING

The applicant through Kariithi & Co Advocates has moved this court under Order XLI Rule 4 of the Civil Procedure Rules seeking an order that:-

“Pending hearing and determination of the present appeal, the honourable court be pleased to order stay of execution of the orders on 19/7/2007 in Runyenjes R.M’s Succession Cause No.84 of 2005 and in particular that Francis Njeru do hold plot No. KAGAARI/MBUINJERU/ T.47 Stall No. 28 Kanja Market in trust for his son KIMANTHI”.

The application is premised on the 5 grounds on its face and on the supporting affidavit of Rosemary Ndere Kangi dated 15/5/2008. The same is opposed by the Respondent Francis Njeru Kogi vide his replying affidavit dated 6th June, 2008. I have considered the application, the grounds in question along with the rival affidavits and the annexures thereto.

First and foremost, I would point out that even as at the time this application was being filed, plot No.KAGAARI/MBUINJERU/T.47 had already been transferred to the Respondent herein as trustee for one Kimanthi as per the certificate of confirmation.

This rendered the application for stay as far as that plot is concerned irrelevant and any orders or stay granted pursuant to that application were of no consequence whatsoever.

Secondly, the alleged threat to transfer or sell the property to third parties is neither here nor there as according to the register, the applicant is registered as a trustee and he would be not therefore have capacity to dispose of it.

Thirdly, the applicant has not even offered security for costs as required under Order XLI to show her seriousness in the matter.

Lastly, the Judgment being appealed against affect many other beneficiaries who have nonetheless not complained and who are not party to this application. If any stay orders are granted, they would also affect them and this would complicate matters since it would be tantamount to condemning them unheard and thus breaching the rules of natural justice. For the foregoing reasons, I find that his application must fail. The same is hereby dismissed with costs to the Respondent.

W. KARANJA

JUDGE

Delivered, signed and dated at Embu this 29th day of ... July. 2008