

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Succession Cause 855 of 1995

IN THE MATTER OF THE ESTATE OF GEORGE MBUGUA NGARE – DECEASED

RULING

After this court made its Ruling on 24th February, 2006, the Applicant Joseph Ndungu Mbugua filed the Notice of Motion dated 12th February, 2008 seeking orders to stay execution of the orders made in the said Ruling.

It is supported by grounds set forth on the face of the application and affidavit of the Applicant sworn on 12th February, 2008.

The grounds set forth in the application and the affidavit, in short, are that the Appeal is an arguable appeal as demonstrated in Memorandum of Appeal, which has four grounds. The affidavit also annexed Ruling and Notice of Appeal dated 6th March, 2006 filed on the same date.

The Learned Counsel appearing for the Applicant simply relied on the application and the affidavit without substantiating the averments that the appeal is an arguable appeal as well as the prejudice faced to be faced or by the Applicant. It is also averred by the Respondent that after the Notice of Appeal was filed no further steps are taken so as to obtain the certified copies of Ruling and proceedings as required in accordance with the promise of Rule 81(1) of the Court of Appeal Rules is filed. Moreover, I do notice from the record that the proceedings are typed.

The crucial issue of the long delay in filing the application (almost two years) has not at all been addressed. It is now trite law that delay in filing any application shall be sufficiently explained.

Considering the circumstances of this application, I tend to agree with the submissions and averments made on behalf of the Respondent that the Application is not made in good faith and should be dismissed.

I thus order that the Notice of Motion dated 12th February, 2008 is dismissed with costs to the Respondent.

Dated and signed at Nairobi this 18th November, 2008.

K.H. RAWAL

JUDGE

18.11.08