



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT KERICHO**

**Prob & Admin Cause 157 of 2001**

**TABUTANY CHERONO KIGET ..... DECEASED**

**AND**

**RAEL CHEMUTAI MAYIEK ..... 1<sup>ST</sup> PETITIONER**

**CHRISTINE CHEPNGENY LEITING ..... 2<sup>ND</sup> PETITIONER**

**VERSUS**

**GRACE CHEMUTAI KIGET ..... OBJECTOR**

**RULING**

On the 29<sup>th</sup> of April, 2005, this court delivered its judgment in respect of the distribution of the deceased estate. The Petitioners in this succession cause were dissatisfied with the said decision and have appealed to the Court of Appeal. They have now filed an application under **Order XLI rule 4** of the **Civil Procedure Rules** seeking the orders of this court to have the said judgment stayed pending the hearing and determination of the appeal now pending before the Court of Appeal. The grounds in support of the application are stated on the face of the application. The application is supported by the annexed affidavit of Rael Chemutai Mayiek. The objector has filed grounds of opposition, in opposition to the application.

At the hearing of the application, I heard the submission made by Mr. Kimanga, Learned Counsel for the petitioners and Mr. Korir, Learned counsel for the objector. The main complaint of the petitioners is that they are apprehensive that their appeal would be rendered nugatory if stay is not granted as they are in fear that the objector would sell the suit property that was awarded to her by this court. The objector has submitted that the apprehension expressed by the petitioners was not founded on fact. She has submitted that there is no proof that the objector intended to sell the land which was awarded to her by this court.

Having carefully read the pleadings filed by the parties in this application and considered the submissions made by the counsel for the parties thereto, the issue for determination by this court is whether the application sought by the petitioners can be granted. The petitioners have made an application for stay of execution of the judgment of this court under **Order XLI rule 4** of the **Civil Procedure Rules**. I have carefully read the **Law of Succession Act** and the Probate and Administration Rules made there under. Rule 63(1) of the **Probate and Administration Rules** provide that only orders **V, XI, XV, XVIII, XXV, XLIV** and **XLIX** of the **Civil Procedure Rules** shall be applicable in proceeding under the **Law of Succession Act**. **Order XLI** of the **Civil Procedure Rules** is not among the rules of the Civil Procedure that can be applied in proceeding filed under the **Law of Succession Act**. The application before me, its merit notwithstanding, is therefore incompetent.

The petitioners have urged this court to invoke its inherent jurisdiction and grant the applicants the order of stay of execution sought. I however hold that the inherent jurisdiction of this court can only be invoked where there is no specific provision of the law and where the justice of the case demands. In the instance application, there are provisions under the **Law of Succession Act** which the petitioners could have invoked if they wanted such an order to be issued in their favour by this court. Inherent jurisdiction

of this court cannot be invoked where wrong provisions of the law have been cited.

For that reason, I find no merit in application for stay of execution filed by the petitioners. I consequently dismiss the same with costs to the objector.

**Dated at Kericho this 30<sup>th</sup> day of September 2005.**

**L. KIMARU**

**JUDGE**