



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**SUCCESSION CAUSE 48 OF 2002**

**IN THE MATTER OF THE ESTATE OF THE LATE JOHN NJOROGE MACHARIA  
(DECEASED)**

**AGNES WAMBUI.....PETITIONER/RESPONDENT**

**VERSUS**

**SALOME WANJIKU NJOROGE.....1ST OBJECTOR/APPLICANT**

**STEPHEN IRUNGU MACHARIA.....2ND OBJECTOR/APPLICANT**

**RULING**

This is an application for stay of execution pending appeal brought under Order XLI Rule 4(1) of the Civil Procedure Rules. It was made by the objectors who were dissatisfied with this court's judgment delivered on 4th July, 2005. The applicants have filed a notice of appeal against the said judgment. The applicants stated that they stood to suffer substantial loss if the order of stay was not granted in that by the time the appeal is heard, the Public Trustee shall have seized the assets that formed part of the deceased's estate and sold them and distributed the proceeds as directed by the court; they claimed. The applicants further stated that they had moved the court expeditiously and that they were ready to tender such security as the court would direct.

The respondent opposed the said application and said that the entire estate should be disposed of as directed by this court and the proceeds kept by the public trustee pending the hearing of the appeal. She said that if that was not done, by the time the appeal is heard and determined, the vehicles that formed part of the deceased's estate would have been completely wasted by the second objector. The respondent also stated that she was in dire financial need and was unable to pay house rent and school fees for her child. She further stated that the applicants were collecting a lot of money from the deceased's estate and they were not accounting for the same as had been ordered by the court on 15/7/2005.

On the aforesaid date, this court granted an interim stay of execution on condition that the income that was being generated from the operations of the commercial motor vehicles that formed part of the deceased's estate be deposited on a daily basis in the office of the Public Trustee and copies of the deposit slips be availed to the advocates for the parties herein.

Since that date, the applicants had made only two deposits in the office of the Public Trustee, on 26th July, 2005 Kshs.9,800/- and Kshs.10,000/- on the hearing date. The applicants had also paid a sum of Kshs.57,000/- to the respondent's advocate on account of school fees for the respondent's child, Xavier G. Wambui as per a consent order that was recorded on 7th September, 2005. The applicant's counsel conceded that the applicants had breached the aforesaid court order upon which the interim stay had been granted.

The applicant's conduct and especially that of the second applicant is such that they cannot be trusted to continue being in charge of wasting assets like commercial vehicles as they will most likely operate the same for their benefit and to the detriment of the estate. A party who cannot honour and obey the conditions imposed by a court in granting interim stay of execution cannot expect the court to close its eyes to such disobedience and grant him stay of execution pending appeal.

Besides, the applicants have not shown how they will suffer substantial loss if the order sought is not granted. On the other hand, the respondent will be greatly prejudiced by the continued management of the said motor vehicles as their value will be greatly diminished by the time the appeal is heard and the funds generated by their operations may be minimal.

I find no merits in the said application and dismiss it with costs to the respondent.

DATED, SIGNED AND DELIVERED at Nakuru this 21st day of October, 2005.

**D. MUSINGA**

**JUDGE**

**21/10/2005**

Ruling delivered in the presence of Mr. Karanja for the applicants and N/A for the respondents.

**D. MUSINGA**

**JUDGE**

**21/10/2005**