



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MOMBASA**

**Probate & Admin. Cause No. 107 of 2000**

**IN THE MATTER OF THE ESTATE OF: SWALEH KARAMA**

**RULING**

The application before the court is dated 28/6/05 seeking an injunction pending hearing of an appeal proposed to Court of Appeal.

Application is opposed by the respondents who have filed a preliminary objection arguing that the application is incompetent, misconceived and bad in law and that there is no appeal pending.

Argument was that there is no right of appeal in matters decided in the high Court under Cap 160. The Parliament never intended that succession matters should reach Court of Appeal. Also that Civil Procedure Rules are not applicable save those specifically mentioned. Section 41 is not one of the Rules stated. I am inclined to agree with the Respondents. The rules of Civil Procedure and the provisions of the Act (Cap 21) are expressly excluded under the Succession Act. However anyone seeking injunction pending appeal can invoke the powers granted to court of Appeal under the Court of Appeal Rules.

I therefore find no merit in this application and the same is dismissed with costs.

**Delivered and dated at Mombasa this 20<sup>th</sup> day of December 2005.**

J. KHAMINWA

J U D G E

20/12/05

Khaminwa, J

Jason – Court Clerk

Mr. Khatib for Repondent

Ruling read in his present.

KHAMINWA, J