



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 5 OF 1988**

**IN THE MATTER OF THE ESTATE OF CHOMBA RANGATA  
(DECEASED)**

ANTONY KABUITU RANGATA.....APPLICANT

Versus

ESTHER WANGUI CHOMBA.....RESPONDENT

**RULING**

The Summons before me, is brought under Rules 49, 59 and 73 of the P & A Rules as well as Order XLI Rule 4(1) of the Civil Procedure Rules. The applicant is seeking for an order of stay of execution pending the hearing and determination of the appeal. Secondly the applicant also seeks for a restraining order to be directed to the respondent against interfering with Title numbers Mutira/Kaguyu/3804 and Title number Mutira/Kaguyu/599. This Summons is supported by an affidavit of the applicant sworn on 7th July 2003.

According to the applicant he has filed a Notice of Appeal against the ruling of this court delivered on 17th October 2003. That application dated 15th July 2003 was also seeking for an order of stay of execution pending the hearing and determination of the application and an order seeking to reinstate the application dated 19th June 1995.

It is not at all clear what matters are being stayed, following the ruling of 17th October 2003. The ruling of 17th October 2003 did not confer any rights to the respondent capable of being executed apart from the order of costs. The order that gave the respondent powers or substantive rights was the one of 25th November 2002, which dismissed the objection proceedings. There was no appeal against that dismissal orders and the respondent, pursuant to the confirmed grant subdivided the subject land and the same is transferred to third parties. This fact is duly acknowledged by the applicant in the supporting affidavit.

I have carefully considered the application for stay of execution of the orders of 17th October 2003 and with tremendous respect to the counsel for the applicant, the only consequential order capable of being stayed is the one of costs against the applicant.

Refusal to reinstate the application that was dismissed on 25th November 2002 did not occasion any execution; the confirmed grant was executed after the order of 25th November 2002 and that is the order that the applicant in my view should have applied for stay.

Accordingly I dismiss the application dated 7th November 2003 as I find it has no merit with costs to the respondent.

Ruling read and signed on 6th February 2004.

**MARTHA KOOME**

**JUDGE**