

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

H.C. SUCCESSION CAUSE NO. 348 OF 1989

IN THE MATTER OF THE ESTATE OF SAMUEL MUNJUGA

NJUGUNA – DECEASED

R U L I N G

The application dated 21st November, 2001 seeking orders to allow the Deputy Registrar to sign all relevant document on behalf of the Administratrix Esther Nyambura Munjuga and the application dated 13th March, 2002 by the said Esther to seek leave to file an appeal out of time were directed to be heard together under the peculiar circumstances of the matter on hand.

The appeal against the ruling of Aganyanya J. delivered on 9th November, 2000 was filed on 20th December, 2000. The High Court directed Esther to seek stay of order before Court of Appeal after both the counsel consented to stay the execution for three months. These orders were made on 30th April 2001. I am not informed whether any stay order was either applied for or granted by the Court of Appeal. Be that as it may, what is averred and submitted before me is that the appeal came up for hearing on 21st February 2002 and counsel for the appellant (Esther) was asked to seek the leave of the superior court by Court of Appeal and the appeal filed as such was dismissed.

Thereupon, an application was filed on 14th March 2002 to seek leave to file an appeal. The affidavit does not aver why the application was filed after almost three weeks from the date when it was made obvious that the application was inevitable and the appellant was aware. No further order or document was required to be obtained to make and file this kind of application. It is an old matter of the year 1989 and the ruling against which this appeal is sought to be filed also was decided in November 2000. It is obvious that this court has wide discretion to grant the order prayed for but that wide discretion cannot be exercised indiscriminately. It has to be based on judicial and judicious grounds. This court also while looking at the case of applicant, consider the plight of the Respondent/Objector who had ruling on his hand since November 2000. Before me is a litigant who comes before the court as and when it suits her without any explanation of her action. I do not think, I am persuaded that she deserves the exercise of the discretion.

Considering both the sides of the matter, I am refusing to exercise my discretion and order that the application dated 13th March 2002 be dismissed with costs.

Coming to the second application dated 21st November, 2001 these are my orders to wit:

(1) The Administratrix / Respondent Esther Nyambura Munjuga is directed to sign all the documents mentioned in prayer (d) of the application forthwith.

(2) In the event of her failure to do so within 14 days from the date hereof, prayer number (d) is allowed as prayed.

The Respondent to pay costs of this application also.

Dated and delivered at Nairobi this 17th day of June, 2002.

K.
J U D G E.

H.

RAWAL