

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
PROBATE AND ADMINISTRATION NO. 2258 OF 1996

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IN THE MATTER OF ISMAEL JUMA CHELANG'A (DECEASED)

RULING

The Respondent has made an application for stay of Execution pending an appeal against the decision of this court delivered today. This application is made under Rule 63(1) of Probate and Administration Rules.

The Respondent has at the same time made an application for leave to file an appeal against today's decision.

I will grant leave to the Respondent to file an appeal against today's decision but this must be done within fourteen days from today.

On the issue of stay of Execution the Respondent has not put on record the grounds in support of the same. But in giving this matter the due consideration it deserves, I observe that the applicant is a widow who has obtained and is the holder of a limited grant of Letters of Administration AD Colligenda bona. She is therefore entitled to preserve the estate of the deceased through payments which I have decreed, in particular payment of Land Rates, Security Services, workers, payment towards farming activities and the insurance cover for motor vehicle KAE 007W.

As a widow, the applicant solely depends for her daily subsistence on her deceased husband's estate ie she is entitled to be looked after by this estate as to her food, medical care, shelter needs and other necessities of life, but under the supervision of the court. The children of the deceased, whom the Respondent herself has recognized and accepted, need to be looked after by the same estate. Their needs are education, medical care, shelter and other necessities of life. When granting this application, I had all these considerations in mind.

I think I will be doing injustice to the widow of a dead man and to his children if I were to deny them food, shelter, education and medical care. This I do not intend to do. The deceased must have made savings in his life so that, after his death, his widow and children are provided for.

The intended appeal, if filed, cannot be disposed off within a short time because the proceedings, now running into 600 pages and more, must be typed and certified. I agree with Mr. Miller that there is no guarantee this will be or can be done during the next court session 18.9.2000 – 21.12.2000. It would be inhuman to deny the applicant and her children the source of their livelihood for that period or for any shorter period.

I therefore decline to grant a stay of execution as prayed by the Respondent and dismiss her application for it.

It is so ordered.

A.G.A. ETYANG

JUDGE

13.9.2000