



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAROK**

**MISC APPLICATION NO. 9 OF 2019**

**SIMON SALAON PERTET**

**ANNE LANOI PERTER**

**EDWARD PARSINTEI PERTET(Suing as the adm of the estate of**

**STEPHEN LEIYAN PERTET.....INTENDED APPELLANTS/APPLICANTS**

**VERSUS**

**JOHN MEITAMEI OLE SAIKA.....1<sup>ST</sup> RESPONDENT**

**TOWN CLERK OF NAROK.....2<sup>ND</sup> RESPONDENT**

**RULING**

By a Notice of Motion dated 18/10/19 the Applicant sought for orders of stay of execution of the judgment in Narok CMCC No. 82 of 2007 John Metaimei Ole Saika-versus-Virginia Pertet & others and leave to appeal out of time.

The 1<sup>st</sup> Respondent raised a preliminary objection to the application that the said applicant lacks the locus standi to institute the suit herein and that the application offends the provisions of order 1 rule 10, order 42 rule 5 and order 2 rule 15 of the Civil Procedure Rules and thus prays that the suit be struck out as it discloses no cause of action.

The court had directed that the application be disposed off by way of written submissions though the applicants had not filed their submissions and the respondents' preliminary objection is centred on whether a party who was not a party to the dispute in the lower court can institute an appeal. It is the respondents' contention that the applicants have no audience as they failed to become substantive parties in the dispute before the lower court following the demise of his parents.

Having considered the preliminary objection which is not opposed by the Applicants I find that the Applicants having not been parties to the suit before the trial court cannot purport to file an appeal. Following the circumstances that lead to the determination of the primary suit it would have been proper for the applicant to have first applied to the court to have them substituted in the place of the deceased and in the circumstances I find that the preliminary objection dated 9<sup>th</sup> November, 2019 is merited and I uphold the same and I accordingly strike out the notice of motion dated 18<sup>th</sup> October, 2019.

**DATED, SIGNED and DELIVERED IN OPEN COURT at NAROK on this 5<sup>TH</sup> day of MAY, 2020.**

**Mohammed Kullow**

**Judge**

**15/4/2020**

In the presence of:

CA:Chuma

N/A for the advocates and parties

**Mohammed Kullow**

**Judge**

**5/5/2020**