



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of Ezekiel Lukalo Aluda (Deceased) (Succession Cause 408 of 1998) [2023] KEHC 18393 (KLR) (2 June 2023) (Ruling)

Neutral citation: [2023] KEHC 18393 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 408 OF 1998**

WM MUSYOKA, J

JUNE 2, 2023

**IN THE MATTER OF THE ESTATE OF EZEKIEL LUKALO ALUDA
(DECEASED)**

RULING

1. The application for determination is dated July 1, 2022. It is brought at the instance of Beatrice Lukalo, who I shall refer hereto as the applicant. It seeks stay of the judgment delivered herein on May 27, 2022, pending appeal, and orders to restrain the respondent, Tom Lukalo, from interfering with the estate of the deceased. The applicant, being dissatisfied with the judgment, evinces a desire to appeal. A draft memorandum of appeal is attached to the application.
2. There is a reply to the application, by the respondent, vide an affidavit sworn on October 10, 2022. He avers that there is no decree that is capable of being executed, and the case is yet to be finalized. He states that the court did not distribute the estate. It is also stated that the applicants had not offered security.
3. Although directions were not given, for disposal of the application by way of written submissions, the applicant has filed written submissions, dated August 5, 2022. I have read through the same, and noted the arguments made. She has cited *HGE vs SM* [2020] eKLR (Musyoka, J). The respondent has not filed any written submissions, despite pledging to do so, when the matter came up on October 19, 2022.
4. The applicant is within her rights, to move to a higher court, for a second opinion, if she does not agree with the opinion expressed in the judgment of May 27, 2022. She is equally within her rights to ask this court to make orders for the preservation of the subject-matter of this cause, pending the hearing and determination of her appeal.
5. Is there a decree capable of being executed? I do not think so. I did not make any orders on the distribution of the estate. My conclusion was that there were bits of information lacking, and the parties needed to plug the gaps by filing further evidence, if any, before the court makes final orders on distribution. No distribution can be done on the basis of the judgment of May 27, 2022. The only



thing that can happen is the filing of further affidavits, to address the various issues that I raised and addressed in the said judgment.

6. There is the prayer that seeks to restrain the respondent, his servants, agents, Advocates or auctioneers from interfering with the estate. No orders were made granting any rights to the respondent over any of the assets of the estate, in respect of which he could take steps to enforce, one way or the other, using either Advocates or auctioneers, or other servants or agents. The estate has not been distributed, so the respondent would have no basis for taking any precipitate steps with respect to the estate, based on the impugned judgment.
7. In view of the above, I find no merit whatsoever, in the Motion, dated July 1, 2022, and I hereby dismiss it. It is a family matter, so each party shall bear their own costs.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA ON THIS.....
2NDDAY OF.....JUNE.....2023**

WM MUSYOKA

JUDGE

Mr. Erick Zalo, Court Assistant.

Appearances

Mr. Wachakana, instructed by Wachakana & Company, Advocates for the applicant.

Mr. Munyendo, instructed by Anziya & Company, Advocates for the respondent.

