



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**SUCCESSION CAUSE NO. 341 OF 2001**

**IN THE MATTER OF THE ESTATE OF WILLIAM ODENY MASARA (DECEASED)**

**RULING**

1. The application for determination is dated 23<sup>rd</sup> December 2020. It seeks stay of execution of ruling delivered on 22<sup>nd</sup> May 2020 and the orders and certificate of confirmation of grant pending appeal.
2. The background is that this court on 22<sup>nd</sup> May 2020, allowed an application dated 23<sup>rd</sup> April 2015, which had sought that the name of Francis Kaniga Odeny be substituted with that of William Masara Ooko, on the basis that the same referred to the same individual. The applicant, John Oloo Odeny, is aggrieved by that order. He says the ruling was delivered without notice to him, and that he has filed an appeal against the ruling. He avers that the respondent had extracted the order, and he was carrying it into effect, to his detriment.
3. There is a reply to the application, by William Masara Ooko, the respondent. He avers that a hearing notice was served with respect to the application that led up to the making of the impugned orders. It is said that the applicant did not reply to the application, and had acted as if he had lost interest in the matter.
4. Interim orders were made on the application on 31<sup>st</sup> December 2020
5. Directions were given on 24<sup>th</sup> March 2021, for canvassing of the application by way of written submissions. Both sides have filed written summons, complete with judicial authorities in support of their respective positions. I have read through the same and noted the arguments made.
6. I note that the applicant filed a notice of appeal, dated 27<sup>th</sup> May 2020, and served it on the respondent. He also requested for and obtained certified copies of the proceedings and the ruling. There is no evidence that he eventually filed appeal, but it is clear that he has done all the preliminaries.
7. Each party is entitled to their day in court. The applicant is aggrieved by the impugned orders. He has a right to get a second opinion from a higher court. There is sufficient proof that he is headed for the Court of Appeal. So that his intended appeal is not rendered nugatory, it would only be fair and just that the *status quo* be preserved.
8. Consequently, I shall grant orders in terms of prayer 4 of the Chamber Summons dated 23<sup>rd</sup> December 2020. Costs shall be in the cause. It is so ordered.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 10<sup>TH</sup> DAY OF DECEMBER 2021**

**W MUSYOKA**

**JUDGE**