

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

SUCCESSION APPEAL NO. 1 OF 2021

(From the decision of Hon. ZJ Nyakundi, Senior Principal Magistrate (SPM),

delivered on 28th January 2021, in Butali PMCSC No. 67 of 2019)

MARY NANZALA.....APPELLANT

VERSUS

JOSECK KITUI MULUNDA.....RESPONDENT

RULING

1. The matter for determination is the Motion, dated 9th March 2021, principally seeking stay of execution of a certificate of confirmation of grant issued by the primary court in Butali PMCSC No. 67 of 2019, on 21st September 2020, pending hearing and determination of the instant appeal, and also for a prohibition to be entered in the register for Kabras/Matsakha/447.
2. After the ruling of 28th January 2021, the appellant was aggrieved, and, on account of that, she took the steps to exercise her right of appeal by lodging the instant appeal, which was registered at the registry here on 18th February 2021, within the time allowed for lodging appeals from decisions of a civil nature.
3. The appellant is entitled to her day in court. It would not be prudent that the process of transmission of the land be carried out while an appeal is pending, for if it proves successful, all the processes undertaken at transmission would have to be nullified.
4. Accordingly, I allow the Motion, dated 9th March 2021, in its entirety. Costs shall be in the appeal. Let the Deputy Registrar cause the matter to be listed for mention for the purpose of taking directions on disposal of the appeal. I note that the trial court records have been availed from the lower court. Let the appellant file and serve a record of appeal within fourteen days. It is so ordered.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 10TH DAY OF DECEMBER, 2021

W. MUSYOKA

JUDGE