

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

SUCCESSION CAUSE NO.137 OF 2010

IN THE MATTER OF THE ESTATE OF THE LATE WILLIAM CHERUIYOT LELMET - (DECEASED)

MIKE LELMET & 3 OTHERS.....ADMINISTRATORS/APPLICANTS

VERSES

JULIA KIMOI CHEBIATOR & 2 OTHERS.....OBJECTORS/RESPONDENTS

RULING

1. By their Notice of Motion dated 30th November 2019, the Applicants have prayed for orders of stay of execution of this court's ruling dated 23rd July, 2019 and by extension the judgment dated 10th December, 2018 pending the hearing and determination of the intended appeal to the Court of Appeal. The application is supported by the sworn affidavit of Mike Lelmet dated the same date.
2. Basically the Applicants are dissatisfied with the decree of this court pursuant to the judgment dated 10th December 2018. The ruling dated 23rd July, 2019 was praying for the review of the said judgment of the court but it was declined.
3. The application was opposed by the Respondents vide the replying affidavit of Julia Kimoi Chebiator dated 16th December, 2019. She states that the Applicants have benefited from the estate and thus the application is meant to further delay the enjoyment of the fruits of the judgment.
4. **Order 42 rule 6** of the Civil Procedure Rules clearly spells out that for such an application to succeed the applicant must demonstrate that it stands to suffer substantial loss incapable of being compensated and that the application has been made without undue delay. If necessary, the court may order the provision of security for costs.
5. Looking at the history of this matter which is pitting the beneficiaries of the deceased, whether directly or not, there is need for the estate especially the capital assets to be secured pending the outcome of the Court of Appeals decision. Should the land be subdivided and the titles be issued and should the higher court tamper with the findings of this court, it shall then be very costly to reverse the steps which may have been taken including the retransfer of the titles to the estate.
6. It is also instructive to note that the parties through the consent on record dated 26th February, 2014 and prior to the full hearing and determination of the suit had agreed on the general usage of the parcels of land. There is therefore no harm should the parties continue with the said status quo pending the outcome of the appeal.
7. In the premises, the application is allowed, namely that there be stay of execution of the judgment of this court dated 10th December, 2018 pending the hearing and determination of the appeal.
8. The consent order dated 26th February, 2014 is hereby maintained pending the outcome of the appeal
9. Costs in the cause.

Dated signed and delivered in open court this 10th day of February, 2020.

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H. K. CHEMITEI

JUDGE

10/12/2020