



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 485 OF 2004

IN THE MATTER OF THE ESTATE OF THE LATE M'IKIUGU M'MUKINDIA (DECEASED)

STANLEY NDEREBA M'IKIUGU..... PETITIONER

VERSUS

GEOFFREY RIUNGU M'IKIUGU..... RESPONDENT

R U L I N G

1. On 28/5/2020, this Court dismissed the petitioner's application which sought leave to appeal out of time to the Court of Appeal against the judgment made on 24/7/2019. In dismissing the application, the Court held that the petitioner did not state when he discovered the delivery of the judgment. The Court also found that there were no plausible grounds of appeal.
2. Further, the court took into consideration that this Cause had been in court for the last 16 years hence litigation had to come to an end.
3. Pursuant thereto, the petitioner filed a Summons dated 21st July, 2020 seeking a stay of execution of "this court's judgment/decree pending the hearing and determination of the intended appeal." The petitioner averred that he has since lodged a notice of appeal against the ruling of this court of 28/5/2020 and that he is likely to suffer substantial loss and damage if stay is not granted as there is a high likelihood that the respondent will dispose of the suit land.
4. The respondent opposed the application and stated that the same was an afterthought. That the cause had taken 16 years to be concluded, the judgment was fair to all the parties and therefore he should be left to enjoy the fruits of his judgment. That by virtue of the dismissal of the petitioner's application dated 2/10/2019, there was no valid notice of appeal against the judgment/decree.
5. On 22/9/2020, the court directed the parties to canvass the application through written submissions. At the time of writing this ruling none of the parties had filed their respective submissions.
6. As it stands, the petitioner has no right to appeal against the judgment of 24/7/2019 (**Sitati J**). He seeks to hang on his intention to appeal against the ruling of 28/5/2020 to be granted a stay of the said judgment.
7. I have considered his prayer for stay of execution. Firstly, the application was brought a month after the delivery of the ruling of 28/5/2020. No justifiable reasons were given for the delay in bringing the application.
8. Secondly, the petitioner did not show the alleged steps the respondent had taken to transfer the suit properties to his detriment as alleged.
9. I think this Court having declined to grant the petitioner leave to appeal, the Court became *functus officio* as regards the judgment of 24/7/2019. It can only deal with proceedings emanating from its ruling of 28/5/2020, which is not the case with the present application.
10. What the petitioner should have done, while he has properly appealed against the order refusing him leave to appeal, was to apply to the Court of Appeal for the stay orders he is now seeking before this Court.
11. Being of the foregoing view, I find the application to be without merit and dismiss the same. This being a family matter each party shall bear own costs.

SIGNED at Nairobi.

A. MABEYA, FCI Arb

JUDGE

DATED and DELIVERED at Meru this 10th day of December, 2020.

JUDGE