

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 828 OF 1994

IN THE MATTER OF THE ESTATE WILFRED THUO NGUGI (DECEASED)

RULING

1. On 20th January 2017 I delivered a ruling herein on an application dated 25th June 2015 wherein I made several orders.
2. Daniel Gatenjwa Thuo has filed a summons herein dated 22nd November 2017 seeking stay of execution of the said orders pending appeal. He avers that following delivery of the said ruling on 20th January 2017, and being dissatisfied of the same, he lodged a notice of appeal herein on 30th January 2017 and wrote to court on 23rd January 2017 asking to be furnished with certified copies of the proceedings and ruling. He has also attached copy of a letter from the local District Surveyor on intended implementation of the orders of 17th July 2017, referring to the formal extract of the orders of 20th January 2017.
3. There is on record one affidavit by Pauline Muthoni Mungai, sworn on 11th December 2017, in opposition to the summons.
4. I directed on 27th January 2018 that the said summons be disposed of by way of written submissions. There has been compliance with the said directions. I have read through the written submissions filed and noted the various arguments advanced by the parties.
5. I have perused the record before me, and noted that the applicant did lodge a notice of appeal herein on 30th January 2017, dated 27th January 2017. He also lodged a letter herein on 3rd February 2017, dated 23rd January 2017, seeking certified copies of the proceedings and ruling.
6. It is within the applicant's rights to be dissatisfied with my ruling of 20th January 2017, and equally it is his right to seek a second opinion at the Court of Appeal by way of appeal. I note that he has taken the preliminary steps of filing a notice of appeal and asking the court to be furnished with certified copies of the proceedings and the impugned ruling. I have also seen the letter from the surveyor which indicates that the process of execution of the said orders has started in the earnest. No doubt execution would render any proposed appeal nugatory.
7. In view of the above, I shall grant the orders sought in the summons dated 22nd November 2017 in terms of prayer 3 thereof. Costs shall be in the cause.

PREPARED, DATED AND SIGNED AT KAKAMEGA THIS 31st DAY OF January , 2019

W. MUSYOKA

JUDGE

DATED, SIGNED and DELIVERED at NAIROBI this 15th DAY OF February, 2019

ASENATH ONGERI

JUDGE