

REPUBLIC OF KENYA

IN THE HIGH OF KENYA AT NAROK

CIVIL APPEAL NO. 2 OF 2019

JOSEPHINE PEYIAI OLE KIU.....APPLICANT

VERSUS

MALOI OLE KIU.....1ST RESPONDENT

NAROK HIGHWAY TOWERS LIMITED.....2ND RESPONDENT

RULING

1. The applicant has applied under certificate of urgency, pursuant to the provisions of sections 3A, 75,78, 79G of the Civil Procedure Act (Cap 21) Laws of Kenya and Order XLI (*sic*) rule 4 of the 2010 Civil Procedure Rules, in which she is seeking the following major orders. An order that the application be certified urgent, which is now spent. Another order to stay the execution of the ruling and all consequential orders granted in Narok CMCC Succession Cause No 25 of 2016 on 28th December 2018, pending the hearing and determination of the instant application. An order to stay the execution of the ruling and all consequential orders granted in the above mentioned succession cause, pending the hearing and determination of the instant appeal. And finally, the applicant seeks an order to provide for costs.

2. In addition to the foregoing the application is supported by seven grounds that are set out on the face of the notice of motion. The major grounds are as follows. The applicant has stated that unless stay is granted, she will suffer substantial loss and that her appeal which has high chances of success will be rendered nugatory. She has further stated that she has expeditiously prosecuted this application. Finally, she has stated that she is willing to abide by any conditions and terms as to the security as the court impose may deem fit to impose.

3. Furthermore, the applicant has supported his application with an eleven paragraphs supporting affidavit. She has deponed to the following major matters. She has deponed that the magisterial court held that the shares held at Narok Highway Towers are not the property of the deceased, Emmanuel Mokire Ole Kiu. She has further deponed that she has filed an appeal against the said ruling, which has high prospectus of success. She has further deponed that unless stay of execution is granted, the intended appeal may be rendered nugatory and she is likely to suffer irreparable damage.

4. Furthermore, she has deponed that she is willing to comply with any order as to security which this court may deem fit to impose. Finally, she has deponed that it is in the interest of justice that stay of execution be granted pending the hearing and determination of her appeal.

5. The respondent were served with hearing notice of this application. This is clear from the affidavit of service which was filed in this court on 4/2/2019.

6. In view of the foregoing, I find that the application is unopposed. I further find that unless stay of execution is granted, the intended appeal may be rendered nugatory. Finally, I find that the instant application has been prosecuted without delay.

7. The upshot of the foregoing is that the application of the applicant has succeeded and as a result, prayer numbers 2 and 3 are hereby granted on condition that the applicant deposits Shs.15,000/= in court as security within 45 days, failing which this order shall lapse.

8. Cost will be costs in cause.

Ruling delivered in open court at Narok this 13th day of February, 2019 in the presence of Mr. Langat holding brief for Mr. Ngaruiya for the appelland and in the absence of the respondent.

J. M. Bwonwonga

Judge

13/2/2019