



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT CHUKA**

**SUCC. APPEAL NO. 1 OF 2019**

**RUCHA MARETE.....APPELLANT**

**VERSUS**

**PITYNESS WANGU KINOTI.....RESPONDENT**

*(Being an appeal from the ruling and orders of Hon. J. M Njoroge Chief Magistrate at Chuka Law Courts Succession Cause No. 232 of 2016 delivered on 5<sup>th</sup> December, 2018.)*

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**R U L I N G**

1. Before this court is a summons dated 15<sup>th</sup> January 2019 by **RUCHA MARETE**, the Applicant/Appellant herein seeking the following reliefs namely:

*a) That this application be heard urgently (spent).*

*b) That this honourable court be pleased to direct the lower court file Chief Magistrate's Civil Case Succession Cause No. 232 of 2016 be transferred to this honourable court for purpose(s) of prosecuting the appeal herein and issuance of further orders appropriate in the circumstances.*

*c) That this honourable court be pleased to issue stay orders staying all proceedings in Chuka Chief Magistrate's Court Succession Cause No. 232 of 2016 and involving the deceased's estate L.R MWIMBI/S.MUGUMANGO/736, pending the hearing and final determination of the appeal herein and or until further orders from this honourable court.*

*d) Costs of this application.*

2. This application has been brought on the following listed grounds namely:-

*a) That the Appellant/Applicant has filed an arguable appeal herein and that it is in the interest of justice to stay proceedings in the lower court to forestall the appeal herein being rendered nugatory.*

*b) That the Appellant undertakes to expeditiously prosecute his appeal herein to its logical so as not to prejudice the Respondent with stay orders.*

3. The Applicant in his Supporting Affidavit sworn on 15<sup>th</sup> January 2019, the Applicant has expressed fears that the matter in the lower court is at advanced stage of conclusion and fears that his eviction from the estate is imminent before his appeal is heard and determined.

4. It is on the basis of the above that the Applicant feels proceedings in the lower court should be stayed so that his appeal herein is not rendered nugatory. He opines that the appeal filed is meritorious and has urged this court to grant the reliefs sought.

5. He has further through learned counsel stated his protest was dismissed and it is on that basis that he preferred the appeal herein.

6. Pityness Wangu Kanoti, the Respondent herein has opposed this application through a Replying Affidavit sworn on 28<sup>th</sup> January, 2019. The Respondent contends that the Applicant has no genuine claim over the estate insisting that the deceased prior to his demise gave the applicant parcel No. L.R Mwimbi/S./ Mugumango/204. She avers that the applicant as such has no right to claim a share in the estate comprised in L.R. Mwimbi/S. Mugumango/736.

7. The Respondent has faulted the Applicant for lodging this application in bad faith stating that the Applicant is only interested in laying a false claim over the estate and that he is out to frustrate her because of greed and malice.

8. This court has considered both the application herein and the response. The only issue for determination really is whether the Applicant has raised sufficient grounds for stay of proceedings in the lower court.

9. It is true that this court is empowered and has a discretion under **Section 47** of **Law of Succession Act** and **Rule 73** P&A Rules, to make or issue any order that promotes expediency and meets the ends of justice. Towards this end courts would normally be hesitant to stay proceedings because that would vitiate the principle of expediency. The basis is that in their very nature stay of proceedings has the effect of stalling the proceedings and determination or conclusion of a matter pending in court. However where circumstances are such that the ends of justice is met and particularly where no other remedy exists, then a stay would be granted but as I have stated it is only in obvious and rare circumstances.

10. This court's view is embolded by the relevant observations made by **Hon. Gikonyo J** in **Re Estate of M'Murianki M'Mugwika (deceased) [2019]** where he stated;

***"..... I should state that my view is that courts should be slow to issue stay of proceedings in a Succession Cause and instead apply Rule 41(3) of Probate and Administration Rules ..... I should think that the nature of succession proceedings is that the estate of the deceased should always be under active and efficient administration. A stay of proceedings militates against that objective. Courts should be guided by the stringent threshold for stay of proceedings as enunciated in Halsbury's Laws of England, 4<sup>th</sup> Edition Vol. 37 pages 330- 332 that:-***

***"the stay proceedings is a serious, grave and fundamental interference in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case and therefore the court's general practice is that a stay of proceedings should not be imposed unless the proceedings beyond reasonable doubt should not be allowed to continue."***

11. Going by the above principle, let us consider the reasons advanced for stay of proceedings by the applicant. His main reason is that the matter in the lower court will be concluded and the conclusion in his view would most likely result in his eviction.

12. That reasoning in my view is not sufficient to warrant a stay of proceedings. In the first place, the matter has not yet concluded. The Respondent has not sought for his eviction. Secondly and more importantly the Applicant has appealed to this court against the dismissal of his protest. This court has not determined the merit of that appeal and if the Appellant will truly expedite the determination of his appeal, then he has nothing to fear because the lower court's decision would be reversed if there is merit to do so. Conversely, if this court were to find no merit on the appeal herein, no prejudice would have been occasioned by a stay of proceedings.

13. The other reason given by the applicant is that his appeal would be rendered useless unless stay of proceedings is ordered. The Applicant has however not placed any evidence or facts before me explaining how the appeal would be rendered futile or an exercise in futility unless stay of proceedings is granted. I do not see any prejudice that would be caused to the applicant's right of appeal and access of justice by the conclusion or determination of the matter pending in the lower court. As I have observed above, the Appellant can still persuade this court to reverse the decision made by the lower court and this court could do so depending on the merit of the appeal herein.

14. In conclusion this court finds that it would be unfair to stay the proceedings in the lower court as doing so for the reasons aforesaid would not meet the ends of justice. Consequently I find no merit in the summons dated 15<sup>th</sup> January 2019, the same is disallowed in its entirety. Costs will abide by the appeal herein.

**Dated, signed and delivered at Chuka this 10<sup>th</sup> day of June, 2019.**

**R. K. LIMO**

**JUDGE**

**10/6/2019**

**Ruling signed, dated and delivered in the presence of Kirimi for Appellant and Respondent in person.**

**R.K. LIMO**

**JUDGE**

**10/6/2019**