



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

FAMILY CIVIL APPEAL NO. 4 OF 2016

FATUMA AWAB MOHAMED.....1ST APPLICANT

ZAINAB MOHAMED HAJI.....2ND APPLICANT

ALI MOHAMED HAJI.....3RD APPLICANT

ABDIKADIR MOHAMED HAJI.....4TH APPLICANT

ABDIRAZAK HASSAN MOHAMED.....5TH APPLICANT

DEKA ABDULLAHI DABAR.....6TH APPLICANT

VERSUS

ASHA ABDULLAHI.....1ST RESPONDENT

NUR ABDULLAHI.....2ND RESPONDENT

KHADIJA MOHAMED ALI.....3RD RESPONDENT

MOHAMED ABDULLAHI.....4TH RESPONDENT

RULING

1. Before me is a Notice of Motion brought under section 1A, 1B, 3A, 78 and 79 of the Civil Procedure Rules and Order 42 rule 6 of the Civil Procedure Rules, and section 50 (2) of the Law of Succession Act Cap. 160 as well as rule 74 of the Court of Appeal Rules under the Appellate Jurisdiction Act.
2. The application was filed under certificate of urgency and sought for leave to appeal out of time and stay of execution of judgment in Garissa High Court Civil Appeal No. 4 of 2016.
3. This court on 31st July 2018 granted leave to file appeal out of time to the Court of Appeal within 21 days.
4. The request for stay of execution of judgment was by consent agreed to be pursued through written submissions. The applicants' counsel filed written submissions on 22nd October 2018. The respondents' counsel does not appear to have filed written submissions to the application.
5. I have considered the application and the written submissions filed in this court. The appeal herein is not an appeal to this court but an appeal to the Court of Appeal. In this regard, I note that from 31st July 2018 when leave to appeal was granted, an appeal should have been filed to the Court of Appeal within 21 days by 20th August 2018. However, the Notice of Appeal dated 5th July 2018 was filed before the Deputy Registrar of this court on 8th August 2018. In my view therefore, there was no compliance with this court's order of filing the appeal in the Court of Appeal, and to-date, I do not know whether an appeal has been filed in the Court of Appeal.
6. In those circumstances, I find that the application herein for stay of execution of judgment of this court pending hearing of the appeal in the Court of Appeal is not merited as no appeal exists, and I thus have to dismiss the same.
7. Consequently, I dismiss the application for stay of execution of this court's judgment.

Dated and delivered at Garissa this 20th Day of November 2018.

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George Dulu

JUDGE