



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

SUCCESSION CAUSE NO. 111 OF 2008

IN THE MATTER OF THE ESTATE OF ANTHONY BWILE MUKENYA – DECEASED

FRIDA NECHESA BWILE.....APPLICANT/RESPONDENT

AND

PRISCILAH NABALAYO BWILE - 1ST ADMINSTRATRIX/APPLICANT

JAMES ANTHONY BWIL.....2ND ADMINSTRATOR

R U L I N G

1. By her application dated 13th September 2018 the applicant prays for stay of execution of the judgment delivered by this court on 24/5/2017 pending the determination of the appeal number 43 of 2018 now pending at the Court of Appeal in Kisumu. Substantially, the applicant prays that should the judgment be executed then she stands to suffer loss and damage and the appeal rendered nugatory.
2. On their part the respondent content that there is nothing much to be determined by the Court of Appeal as the issue relating to the will are clear and straight forward as the applicant does not dispute the same.
3. The celebrated case of *Butt Vs Rent Restriction Tribunal (1979) eKLR* laid down the clear principles to be followed in such an application. Substantively, the same shall be granted if in the opinion of the court, failure to do so shall render the appeal nugatory.
4. Having heard the parties in this matter I am satisfied that if this court's judgment shall be executed, then the titles subsequent to sub division shall vest in the beneficiaries as determined in the grant or the impugned judgment of this court hence the parcels of land shall be mutilated at the expense of the parties herein. Should the Court of Appeal find merit in the pending appeal then restoring the status quo ante shall be onerous on the deceased family.
5. The best thing to do in the circumstances is to put on hold the execution of the judgment to allow the applicants get a second chance at the Court of Appeal.
6. There shall be no prejudice in any event to be suffered by the parties as the suit land is still intact and at any rate they have been utilising even after the demise of the deceased.
7. In the premises the application dated 13/9/18 is hereby allowed in terms of prayer (c) thereof.

There be no orders as to costs.

Delivered, signed and dated at Kitale this 10th day of December, 2018.

H.K. CHEMITEI

JUDGE

10/12/18

In the presence of:

Wanyama holding brief for Ngeywa for Appellant

No appearance for Andambi

Court Assistant – Kirong

Ruling read in open court.