



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT GARISSA**  
**CIVIL APPEAL NO. 4 OF 2016**

1. **FATUMA ANAB MOHAMED**
2. **ZAINAB MOHAMED HAJI**
3. **ALI MOHAMED HAJI**
4. **ABDIKADIR MOHAMED HAJI      APPELLANTS/APPLICANTS**
5. **ABDIRIZAK HASSAN MOHAMED**
6. **DEKA ABDULLAHI DABAR**

**V E R S U S**

1. **ASHA ABDULLAHI**
2. **NUR ABDULLAHI**
3. **KHADIJA MOHAMED ALI      RESPONDENTS**
4. **MOHAMED ABDULLAHI**

**RULING**

Before me is a Notice dated 28<sup>th</sup> November 2016 filed by Ali & Company advocates for the appellants/applicants for the withdrawal of their application dated 26<sup>th</sup> October 2016 filed by their previous advocate Mohamed & Lethole advocates, relating to the ruling delivered by the Hon. Kadhi in Garissa Kadhi's Succession Cause No. 28 of 2015.

Before me also is a Notice of Motion application filed by the present advocates Ali & Company under certificate of urgency dated 28<sup>th</sup> November 2016 for leave to appeal out of time and stay of execution of orders in the decision made in Nairobi Kadhi's Court Divorce Case No. 130 of 2016, though I am told that the correct Kadhi's Court case is Garissa Kadhi's Succession Case No. 28 of 2015.

From the submissions of counsel who appeared before me, especially Mr. Farouk and Mr. Onono, for the respondents, the request to withdraw the application dated 26<sup>th</sup> October 2016 is not opposed. However, Mr. Farouk has asked for costs as his client had responded to the said application and counsel had also attended court, which was a cost.

My perusal of documents in the file established that indeed, a replying affidavit to the application dated

26/10/2016 sworn by Nur Abdalla the 2<sup>nd</sup> respondent on 16<sup>th</sup> November 2016 was filed.

I will thus allow the requested withdrawal of the application dated 26<sup>th</sup> October 2016, with throw away costs to the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> respondents.

The application or Notice of Motion dated 28<sup>th</sup> November 2016 has obvious mistakes which have been accepted by all parties advocates. The mistakes are in reference to the number of the Kadhi's court case which has been erroneously described as Nairobi Kadhi's Court Divorce Case No. 130 of 2016, instead of Garissa Kadhi's Court Succession Case No. 28 of 2015.

The applicants counsel Mr. Oriwa has asked for leave to amend the application. Counsel for the respondents do not have a problem with that. Counsel for the applicant has also asked for stay of execution order in the interim. Counsel for the respondents are opposed to the grant of interim stay, until an amended application is filed, and they are given a chance to respond to it substantively. Mr. Onono for the 3<sup>rd</sup> respondent has further suggested to mediate in this family matter.

Doing the best I can and balancing the interests of the parties, I will grant leave to the counsel for the applicants to amend the application dated 28/11/2016, by referring to the correct Garissa Kadhi's court case. I will grant stay of execution of the Kadhi's decision in the Garissa succession cause relating only to Plot No. 165 up to 13<sup>th</sup> March 2017 when this matter will be mentioned in court.

In summary, I allow the withdrawal of the application dated 26<sup>th</sup> October 2016 with throw away costs to the 1<sup>st</sup>, 2<sup>nd</sup>, and 4<sup>th</sup> respondents. I grant leave to the applicants counsel to file and serve an amended application to the Notice of Motion dated 28<sup>th</sup> November 2016 to refer to the correct Garissa Kadhi's court succession cause, which has to be filed and served within 14 days from today. I grant stay of execution of the Kadhi's court order in the Garissa Succession Cause No. 28 of 2015 in relation only to Plot No. 165 up to 13<sup>th</sup> March 2017 when this matter will be mentioned in this court.

The appellants/applicants counsel will serve a mention notice on the advocates for the respondents within 14 days from today.

**Dated and delivered at Garissa this 13<sup>th</sup> January, 2017**

**GEORGE DULU**

**JUDGE**