

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 2525 OF 1997

IN THE MATTER OF THE ESTATE OF WARURU KAIRU (DECEASED)

RULING

1. The summons dated 16th October 2015 seeks stay of execution of the implementation of the certificate of confirmation arising from the confirmation orders made on 25th April 2014 pending an appeal to be filed at the Court of Appeal. It is brought at the instance of Grace Wanjiru Waruru, who states that she was aggrieved by the orders made on 25th April 2014. She says that she has applied for certified copies of the proceedings and ruling and filed a notice of appeal. There is copy of a letter dated 25th May 2015 addressed to the court asking for certified copies of the proceedings and ruling. There is also copy of a notice of appeal dated 19th May 2015, and filed herein on 21st May 2015.

2. The reply to the application is by George Kairu Waruru, the administrator, who swore an affidavit on 7th December 2015. He avers that the said application is founded on the wrong provisions of the law. He also states that the court has no jurisdiction to grant stay of execution pending appeal. He argues that the application is brought after considerable delay which is unreasonable.

3. It was directed that the said application be disposed of by way of written submissions. The parties have filed their respective submissions. I have read through the said submissions and noted the arguments made therein.

4. The law relating to applying for stay of execution pending appeal is that the same ought to be brought without unreasonable delay, it must be demonstrated that the applicant would suffer substantial loss and security has been furnished by the applicant. The law requires that the notice of appeal ought to be filed within seven days. The notice before me was a year after, and without leave of court or extension of the time for filing the same. I note too that the request for copies of the proceedings came also a year after the orders were made. It cannot be said that the same was filed after a delay that was not reasonable. On substantial loss, I note that the applicant has not deposed in her affidavit that she would suffer substantial loss should the orders be denied. There is no effort to demonstrate the nature of the substantial loss she would suffer as a consequence. She has also not indicated her willingness to provide security for costs.

5. In view of the above, I am not satisfied that the applicant has made out a case for grant of stay of execution of the confirmation orders pending appeal. The application is for dismissal and I do hereby dismiss the same for costs.

6. I note that the estate comprises of assets that are not situated within Nairobi; but at Limuru, Gilgil and Nakuru. The family is resident at Limuru, Ngecha. Consequently, I hereby order that the cause herein be transferred to the High Court of Kenya at Kiambu for disposal of any pending business.

DATED, SIGNED and DELIVERED at NAIROBI this 12TH DAY OF MAY, 2017.

W. MUSYOKA

JUDGE