



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 95 OF 2006**

**IN THE MATTER OF THE ESTATE OF JOHN TUPENET MURERO (DECEASED)**

**RULING**

1. The Motion dated 12<sup>th</sup> July 2013 is for stay of execution of the orders made on 9<sup>th</sup> May 2013 pending appeal. The applicants have attached to their application a Notice of Appeal dated 22<sup>nd</sup> May 2013 as evidence that they intend to appeal the said orders. There is no evidence that the appeal has been filed, but there is evidence that the proceedings have been typed and a certificate of delay duly executed on 15<sup>th</sup> August 2013.

2. The respondents have replied to the application *vide* the affidavit sworn on 11<sup>th</sup> September 2013 by Esther Malaso Murero. The reply dwells on a number of substantive matters, and does not quite address the pertinent issue before the court, whether stay of execution should be granted or not.

3. It is within the applicant's right to appeal against any decision that they are dissatisfied with. The Court of Appeal in *Rhoda Wairimu Karanja & another vs. Mary Wangui Karanja & another* (2014) eKLR stated that there is no express automatic right of appeal from a decision of the High Court to the Court of Appeal. Decisions of the High Court are however appealable but with leave of the High Court or that of the Court of Appeal where the High Court refuses to grant leave.

4. I note that the preliminary steps have been taken in the matter towards lodging an appeal at the Court of Appeal, such a filing a notice of appeal, obtaining typed proceedings and a certificate of delay. However it has not been demonstrated that leave to appeal has been obtained from the High Court or from the Court of Appeal in terms of the ruling in *Rhoda Wairimu Karanja & another vs. Mary Wangui Karanja & another*.

5. In view of what I have stated above I do not find basis upon which I can grant stay of execution of the orders sought when leave to appeal has not been granted. Consequently, I do hereby disallow the application dated 12<sup>th</sup> July 2013. The same is hereby dismissed with costs. The interim orders obtained on 16<sup>th</sup> July 2013, and which have been extended several times, are hereby discharged.

6. It is so ordered.

**DATED, SIGNED and DELIVERED at NAIROBI this 5<sup>TH</sup> DAY OF FEBRUARY, 2016.**

**W. MUSYOKA**

**JUDGE**