



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**SUCCESSION CAUSE NO. 145 OF 2009**

**IN THE MATTER OF THE ESTATE OF KOSIANDO GATERU MWANIKI (DECEASED)**

**SIMON MWANIKI GATERU.....ADMINISTRATOR/APPLICANT**

**VERSUS**

**CEASAR WAWERU GATERU.....PROTESTOR/RESPONDENT**

**JOSEPH WARUTHI GATERU.....RESPONDENT**

**RULING**

The Notice of Motion before court in dated 23rd October, 2015. The prayers targeted by this ruling are:

1. That this court directs the Deputy Registrar to execute all the documents necessary for the transfer of the properties herein in the names of the beneficiaries/dependants
2. That costs of this application be provided for.

The application is grounded on the supporting affidavit of Ceasar Waweru Gateru. The gist of the application is that by a judgment of this court, the distribution of the Estate of Kosiando Gateru Mwaniki was decided. The Administrator has failed to execute the relevant documents to facilitate transmission. It is urged that the Deputy Registrar of this court do execute the necessary document and transfer titles to beneficiaries.

Simon Mwaniki Gateru (the administrator) has filed a replying affidavit. He depones that he intends to appeal part of the judgment of this court as he was dissatisfied with the judgment of court delivered on the 31th July, 2015 in relation to Land Reference No.NYANDARUA/SAMBUGO/2854. He indicates that he has filed an application for extension of time at the Court of Appeal. He has also given instructions to his Advocate to file an application for stay of execution.

I have considered the application and the Response thereto.

This is a straight forward application. There is a judgment of court which is not varied, stayed and or set aside by any lawful orders of court. The administrator has no option in the matter other than to execute the necessary documents.

An intention to appeal is not enough to stay execution of orders of court.

Consequently, the application dated 23rd October, 2015 is allowed in terms of prayer 2 thereof.

Orders accordingly.

**Dated, Signed and Delivered at Nakuru this 2nd day of February, 2016.**

**A. K. NDUNG'U**

**JUDGE**