



**IN THE HIGH COURT OF KENYA AT MURANG'A**

**CIVIL APPEAL NO 35 OF 2016**

**(Appeal against Decree passed on 12/5/2016 in Murang'a Kadhi Succession Cause No 1 of 2015 –  
Abdilatif S. Malampu, Resident Kadhi)**

**AISHA MOHAMED OMAR.....APPELLANT**

**VERSUS**

**FATUMA JUMA RAMADHAN.....1<sup>ST</sup> RESPONDENT**

**MIRIAM MILACHA DUBA.....2<sup>ND</sup> RESPONDENT**

**R U L I N G**

1. The appeal herein is against the decree passed on 12/05/2016 by the lower court by which a grant of letters of administration intestate in respect to the estate of **Duba Buru Duba** (the Deceased) was confirmed and distribution of the estate ordered. The appeal raises various issues of Sharia law regarding distribution of a deceased person's estate. The Appellant's main complaints in the appeal are that whereas she is a widow of the Deceased, she was given only 6% of the estate and her child only 4% contrary to Sharia; that some money she had borrowed from her *chama* and given to the Deceased was not considered as a debt of the estate as it should have been; that the bulk of the estate was given to the parents of the Deceased, again contrary to Sharia; and that some two divorced wives of the Deceased were given a share of the estate, again contrary to Sharia.

2. The Appellant applied by **notice of motion dated 07/062016**, in effect, to stay execution of the decree of the lower court pending disposal of this appeal - "in effect" because the application as drawn by the Appellant in person lacks proper form and the prayers as expressed therein may not be immediately understandable. But it is quite clear that what she is seeking is stay of execution of decree pending disposal of her appeal.

3. I have read the supporting and replying affidavits. The appeal herein is not frivolous and is arguable. It raises substantial issues of Sharia law. If distribution of the estate as ordered by the lower court was to proceed, the Appellant's appeal might well be rendered nugatory.

4. In the circumstances, and in the interests of justice, I will direct that there be stay of execution of the decree for distribution passed by the lower court pending disposal of the appeal. It is so ordered.

**DATED AND SIGNED AT MURANG'A THIS 10<sup>TH</sup> DAY OF NOVEMBER 2016**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT MURANG'A THIS 11<sup>TH</sup> DAY OF NOVEMBER 2016**