



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE 1769 OF 1999**

**IN THE MATTER OF THE ESTATE OF NS – (DECEASED)**

**RULING**

1. The application dated 30<sup>th</sup> August 2012 seeks stay of further proceedings in this matter pending the hearing and determination of an appeal filed by the applicant to the Court of Appeal. There are two affidavits sworn by the applicant in support of the application.

2. The respondent has not filed a reply to the application but she has filed detailed written submissions. In principle she opposes the application and adduces several grounds.

3. I have carefully gone through the record, the application dated 30<sup>th</sup> August 2013 as well as the written submissions filed by the respondent. The applicant wishes to appeal against the ruling by Karanja J. dated 25<sup>th</sup> July 2012. The point of law raised touches on jurisdiction – whether a Muslim can choose to have their personal matters heard by the High Court instead of the Kadhi's Court. This in my view is a serious point of law. The applicant should be accorded opportunity to argue his position before the Court of Appeal.

4. I note that Notice of Appeal was filed in court on 7<sup>th</sup> August 2012. This was within the 14 days allowed in law. The respondent says that they were not served with the Notice within seven days of its filing as required. To my mind these are technicalities of the law that **Article 159(2)** of the Constitution calls upon the courts to overlook in order to achieve substantial justice.

5. My inclination is to allow the application dated 30<sup>th</sup> August 2013 in the terms proposed. To secure the respondent's position in the event orders are made against the applicant, the applicant shall give security in the sum of Kshs.200,000.00. Security shall be furnished within 21 days from the date of this ruling.

**DATED, SIGNED and DELIVERED at NAIROBI this 14<sup>th</sup> DAY OF March, 2014.**

**W. M. MUSYOKA**

**JUDGE**