



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**FAMILY DIVISION**  
**AT MOMBASA**  
**MISCELLANEOUS CIVIL APPL. NO. 28 OF 2014**  
**IN THE MATTER OF THE ESTATE OF ABDULKARIM OMAR KHAMIS**  
**(DECEASED)**  
**LABIBA SAID MOHAMED.....APPLICANT**  
**VERSUS**  
**JAMILA MBARAK BAADEL..... RESPONDENT**  
**RULING**

By way of this Notice of Motion dated 20<sup>th</sup> June, 2014 brought under certificate of urgency the applicant seeks *inter alia* the following orders:-

- “2. **THAT** there be a stay of execution of the Decree/Order issued on 13<sup>th</sup> May, 2014 in the Kadhi’s Succession Case No. 77 of 2013 pending the hearing and determination of this application.
3. **THAT** the proposed appellant be granted leave to appeal out of time against the whole judgment of the Honourable Sheikh Al Mudhar A. S. Hussein, delivered on 17<sup>th</sup> April, 2014 in Kadhi’s Succession Case No. 77 of 2013.
4. **THAT** the draft Memorandum of Appeal annexed to the affidavit of the applicant be deemed as duly filed and served upon payment of the requisite fees.”

The application was supported by the affidavit of the applicant **LABIBA SAID MOHAMED** sworn on 25<sup>th</sup> June, 2014.

The respondent opposed this application by way of Grounds of Opposition dated 8<sup>th</sup> September, 2014. **MR. AZIZ** Advocate acted for the Applicant while **MR. HAMZA** appeared for the Respondent. Both counsel opted not to file any written submissions but asked court to rely on the pleadings and affidavits on record.

I have carefully perused the material on file. The respondent has not raised any serious objection to the grant of leave to appeal out of time. I therefore allow prayers (3) and (4) of this Notice of Motion. On the question of stay the court is mindful of the fact that this is a succession matter. It is imperative that all beneficiaries be accorded a hearing. The applicant and her children are in occupation of the premises. Should a stay be declined then she stands the risk of being evicted. This will render her intended appeal nugatory. For this reason I do allow the prayer for a stay in terms of prayer (2). The stay to relate to the Kadhi's orders in Succession Case No. 77 of 2013 since no decree had been extracted as yet. Each party to meet its own costs.

**Dated and Delivered in Mombasa this 10<sup>th</sup> day of November, 2014.**

**M. ODERO**

**JUDGE**

In the presence of:

Mr. Odhiambo holding brief Mr. Aziz for Applicant

Ms. Ngige holding brief Mr. Hamza for Respondent

Court Clerk Mutisya