



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO.1227 OF 1999**

**IN THE MATTER OF THE ESTATE OF JANE WANJAGI NGUGI (DECEASED)**

WANJIKU KAMAU.....  
.....1<sup>ST</sup> APPLICANT

WAKONYO  
MUKAI.....  
...2<sup>ND</sup> APPLICANT

VERSUS

WAMBUI MUKAI.....  
.....1<sup>ST</sup>  
RESPONDENT

MUTAHU SUO (*The Administrator of the Estate of*  
JANE MUNJAGI MUKAI)  
.....2<sup>ND</sup>  
RESPONDENT

**RULING**

The applicants have made an application pursuant to **Rules 49 & 73** of the **Probate and Administration Rules** seeking stay of execution of the certificate of confirmation of grant which was issued on 5<sup>th</sup> May 2000. They further sought an order staying the sale or disposal of the deceased's assets namely LR.No.Runda/Nairobi/7785/424 original No.7785/57 pending the hearing and determination of an appeal to be filed to the Court of Appeal from the ruling of this court delivered on 10<sup>th</sup> February 2009. The application is supported by the annexed affidavit of 1<sup>st</sup> applicant, Wanjiku Kamau. The application is opposed. The 1<sup>st</sup> respondent, Wambui Mukai swore a replying affidavit in opposition to the application. At the hearing of the application, this court heard oral rival submission made by Mr. Kinuthia for the applicant and by Mr. Waithaka for the respondent.

This court has carefully considered the said submission. It has also considered the pleadings filed by the parties herein in support of their respective opposing positions. The ruling that is sought to be impeached on appeal was delivered by Rawal J (as she then was) on 10<sup>th</sup> February 2009. The applicants filed an application on 27<sup>th</sup> September 2007 seeking to have the grant of probate of oral Will annulled on the grounds, *inter alia* that the petitioners had failed to disclose all the beneficiaries of the deceased. Incidentally the said grant of probate was issued on 5<sup>th</sup> August 1999 and was confirmed on 14<sup>th</sup> April 2000. The application for annulment of grant under **Section 76** of the **Law of Succession Act** was therefore filed seven (7) years after the grant had been confirmed. The applicants wish to have the said ruling stayed pending the hearing and determination of the appeal that is intended to be filed in the Court of Appeal. It should be noted that other than the Notice of Appeal which was filed on 21<sup>st</sup> March 2012, there is no evidence that the applicants have made any effort to have the appeal ready for hearing. No record of appeal has been prepared. No draft of memorandum of appeal was annexed to the affidavit in support of the application. In opposition to the application, the respondents argue that there has been inordinate delay between the time the ruling was delivered and 19<sup>th</sup> November 2012 when the applicants

filed the present application seeking stay of execution of certificate of the confirmation of grant of probate of oral Will. They further stated that the order sought by the applicants cannot be granted because the 1<sup>st</sup> respondent is already registered as the owner of the suit parcel of land pursuant to the grant of probate of oral Will that was issued by this court.

Upon evaluating the facts of this application, it was clear to this court that the applicants have not placed any material before this court to enable this court exercise its discretion in their favour. As correctly noted by the respondents, the delay has been inordinate. No reasonable explanation has been given by the applicants for the delay in filing the present application. The applicants claim that they filed the application a short period after Kariuki G.B.M. J (as he then was) granted them extension of time to file appeal out of time. That may be the case. However, it was apparent that since the said extension of time was granted, the applicants made no effort to prepare the record of appeal. The proceedings have been typed yet no record of appeal has been prepared or filed. It is clear to this court that the applicants have been indolent. This court cannot reward their indolence by granting the prayers sought in this application. Further, it was clear to this court that that which is sought to be stayed has already taken place. The property in question has already been transferred to third parties. There is nothing to be stayed. The horse has already bolted out of the stable.

In the premises therefore, the application dated 10<sup>th</sup> April 2013 lacks merit and is hereby dismissed with costs to the respondents.

**DATED AT NAIROBI THIS 1<sup>ST</sup> DAY OF NOVEMBER, 2013**

**L. KIMARU**

**JUDGE**