



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT ELDORET

CIVIL SUIT NO. 74 OF 2010

JAMA MOHAMMED

MAHMOUD.....APPELLANT

VERSUS

HALIMA

MOHAMMED.....RESPONDENT

R U L I N G

The Notice of Motion dated 9th June, 2010 is primarily for an order that there be a stay of proceedings in the Succession Petition No. 6 of 2010 in the Kadhis Court at Eldoret pending the hearing and determination of High Court Civil Appeal No. 74 of 2010.

The basic ground for the application is that the applicant has challenged the jurisdiction of the Kadhi's Court to entertain and grant reliefs sought in the petition before the Kadhi.

In his supporting affidavit dated 9th June 2010 the applicant avers that Land Parcel No. NANDI/KAIMOSI.2067 was lawfully and legally acquired by himself but is a subject of the material petition prompted by allegations that it was fraudulently transferred to himself.

A replying affidavit dated and deponed by the respondent on the 16th September 2010 indicates that the suit property was inherited by the applicant who excluded other beneficiaries from it and obtained a title deed in his name. This is the reason why the petition was filed in the Kadhi's Court.

The jurisdiction of the Kadhi's Court to hear and determine the matter was challenged by the applicant. However, the objection was overruled thereby prompting the present application for stay of proceedings pending the hearing and determination of the appeal preferred by the applicant.

After due consideration of the application and the objection thereto, this court is not satisfied that the applicant has shown good cause for the grant of the orders sought. There is nothing to suggest that substantial loss shall be suffered by the applicant if stay is not granted.

The petition has already been filed in the Kadhi's Court and by dint of section 5 of the Kadhi's Court Act (Cap 11 Laws of Kenya), a Kadhi's Court has the necessary jurisdiction to hear and determine questions relating to inheritance in proceedings in which all the parties profess the Muslim religion.

In the circumstances, the present application is devoid of merits and is hereby dismissed with costs to the respondent.

J.R. KARANJA

JUDGE

(Read and signed this 1st day of March 2011 in the presence of Mr. Ngumbe holding brief for Mr. Limo for applicant)