



IN THE COURT OF APPEAL

AT MALINDI

(CORAM: OUKO (P), W. KARANJA & GATEMBU, J.J.A)

CIVIL APPEAL (APPLICATION) NO. 9 OF 2020

BETWEEN

MARGARET K. WAMBUA.....1ST APPLICANT

KINGSTONE K. MULEWA.....2ND APPLICANT

AND

MUTISYA MUINDI MZUSYO.....1ST RESPONDENT

BEATRICE KAVATA WAMBUA.....2ND RESPONDENT

(Being an application for stay of execution of Judgment of the High Court of Kenya at Malindi (W. Korir, J.) delivered on 19th December 2018 in High Court Succession Cause No. 3 of 2009)

RULING OF THE COURT

1. In their application dated 27th January 2020 filed on 29th January 2020, the applicants, Margaret K. Wambua and Kingstone K. Mulewa have sought an order of stay of execution of the judgment of the High Court (*W. Korir, J.*) delivered on 19th December 2018 pending the hearing and determination of their intended appeal.
2. The material presented in the application is insufficient for the Court to appreciate the applicants' case. The impugned judgment is not attached. The notice of appeal is also not attached. Beyond the unsubstantiated statement that the appeal has high chance of success, it is not indicated, either in the form of a draft memorandum of appeal or in the body of the application or in the supporting affidavit what the intended grounds of appeal are.
3. The foregoing notwithstanding, the impugned judgment is reported, *In re Estate of Nelson Wambua Masila (Deceased) [2018]eKLR* (<http://kenyalaw.org/caselaw/cases/vie/w/166176>) and is in relation to a succession dispute in which the applicants are aggrieved by the finding by the lower court that a property known Plot No. 54, Ngala Estate, Malindi is not part of the estate of the deceased and is therefore not available for distribution as it belongs to the 1st respondent.
4. As already mentioned, the grounds on which that judgment is challenged or is intended to be challenged are not indicated and we are therefore unable to determine whether the threshold for the exercise of the Court's discretion under Rule 5(2)(b) of the Court of Appeal Rules, which the applicants have a duty to fulfil, have been satisfied. See *Stanley Kangethe Kinyanjui vs. Tony Keter & 5 Others, Civil Application No. Nai 31/2012 [2013] eKLR*. In effect, the applicants have not demonstrated to us that the appeal or intended appeal is arguable. Neither is it indicated how the appeal or intended appeal will be rendered nugatory if the orders of stay of execution sought are declined and the appeal ultimately succeeds.
5. The result is that the application fails and is dismissed. We make no orders as to costs.

Dated and delivered at Nairobi this 19th day of March, 2021.

W. OUKO, (P)

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JUDGE OF APPEAL

W. KARANJA

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JUDGE OF APPEAL

S. GATEMBU KAIRU, FCIArb

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR