



IN THE COURT OF APPEAL

AT NYERI

(CORAM: KARANJA, KIAGE & J. MOHAMMED, JJ.A)

CIVIL APPLICATION NO. NYR. 27 OF 2020

BETWEEN

LEAH WAIRIMU WAWERU .....1ST APPLICANT

MARTHA NYAMBURA KANGTHE.....2ND APPLICANT

MILKA WANGARI KAMAU .....3RD APPLICANT

JOSHUA NJUGUNA KAMAU.....4TH APPLICANT

DAVID NGUGI KAMAU.....5TH APPLICANT

ALBERT GICHERU KAMAU.....6TH APPLICANT

SIMON GICHERU KAMAU.....7TH APPLICANT

RUTH MUMBI KAMAU.....8TH APPLICANT

AND

WAITHERA MOHOYO .....1ST RESPONDENT

RUFFAS MWANGI KAMAU.....2ND RESPONDENT

(An application seeking stay of execution of the ruling/order of the High Court of Kenya at Nakuru (Matheka, J.) dated 2nd *September, 2020* in **H. C. Succession Cause No. 76 of 2015**)

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**RULING OF THE COURT**

All eight applicants have through the firm of Gichuki Kenga, filed this application seeking an order of stay of execution of the ruling/order of Justice Mumbua Matheka dated 2nd September, 2020 pending the hearing and determination of the intended appeal.

The intended appeal arises from a Succession matter whereby the applicants filed a Notice of Motion on 26th November, 2016 seeking, in the main, orders that the confirmed grant of letters of administration issued to the two respondents as administrators of the estate of the late Livingstone Kamau Ruffus be revoked and that new administrators be appointed in their place.

Having heard the application, the learned Judge came to the conclusion that the parties have failed to establish grounds for revocation of the Grant as provided for under **Section 76** of the Law of Succession Act and consequently dismissed the application.

The applicants were aggrieved by the said order and intend to file an appeal against the same. However, they have not yet filed the appeal and having realized that the statutory time within which they should have filed the appeal had lapsed, they have moved this Court vide **Civil Application No. 27 of 2020** seeking extension of time. That is therefore, an acknowledgment that there is no Notice of Appeal filed at the appropriate registry in this matter. There is an attachment of a document headed "**Notice of Appeal**" attached to the supporting affidavit but the document bears no Court stamp nor is it signed by the deputy registrar of the Court, and clearly the same has neither been filed nor lodged at the registry. An application for extension of time is yet to be heard by a single Judge as required by law.

It is axiomatic and it bears repeating that in respect of applications predicted on **Rule 5(2)(b)** of this Court's Rules, this Court draws its jurisdiction from the Notice of Appeal filed in compliance with **Rule 75** of the Court of Appeal Rules. See **Safaricom Limited -v- Ocean View Beach Hotel Limited & 2 others, Civil Application No. 327 of 2009.**

**Rule 5(2)(b)** provides as hereunder:-

**“Subject to sub rule (1), the institution of an appeal shall not operate to suspend any sentence or to stay execution, but the court may -**

**i. In any civil proceedings, where a Notice of Appeal has been lodged in accordance with Rule 75, order a stay of execution, an injunction or a stay of any further proceedings on such terms as the court may think just.” (Emphasis ours)**

**Rule 75** on the other hand requires a notice of appeal to be filed within 14 days of the date of the decision against which it is desired to appeal. Clearly therefore, there being no Notice of appeal filed pursuant to Rule 75, there is no competent appeal before us on which this application can be premised. In the circumstances, we find the application incompetent and strike it out accordingly with no order as to costs this being a family matter.

**DATED AND DELIVERED AT NAIROBI THIS 21ST DAY OF MAY, 2021**

**W. KARANJA**

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**JUDGE OF APPEAL**

**P. O. KIAGE**

.....

**JUDGE OF APPEAL**

**J. MOHAMMED**

.....

**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR**