



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: OUKO (P), MAKHANDIA & KANTAL, JJA)

CIVIL APPLICATION NO. NAL. 359 OF 2018

BETWEEN

STEPHEN MWATHA KANJA.....APPLICANT

AND

PETER KIARIE NJUGUNA

BETH MIRIGO.....RESPONDENTS

(Being an application for a stay of execution of the judgment of

(R. E. Ougo,J) made on 13th day of September, 2018 in

SUCCESSION CAUSE NO. 100 OF 2004)

RULING OF THE COURT

The applicant has approached this court under the Provisions Orders 42 Rule 6, and 51 of the Civil Procedure Rules and Sections 1A, 1B and 3A of the Civil Procedure Act. The applicant seeks a temporary injunction restraining the respondents from interfering with the suit property described as plot **No. 6 Gatundu market**, pending the hearing and determination of the appeal.

The respondents did not file any papers in opposition to the application.

Neither have any submissions been filed by the parties.

This application is purely premised on the provisions of the Civil Procedure Act and the rules made thereunder. The Provisions of the Civil Procedure Rules do not govern proceedings and procedure before this court and any invocation of the same is clear misconceived idea- **National Land Commission Vs. Johnson Olio Misiga 2020 eKLR** in which **Kiage, JA** in proceeding to dismiss an application brought under the wrong provisions of the law stated:-

“The Rules of this Court provide a complete code governing our procedure. As such, every conceivable application to Court is provided for and it is for an applicant to simply invoke the appropriate rule. Thus, even assuming that the applicant herein needed extension of time (and he did not) all he needed do is cite Rule 4 of the Court of Appeal Rules. Instead, the motion purports to invoke that rule of The Civil Appeal Rules (sic) which I am yet to meet. But he did not stop there. He went on to cite “Rule 48(1)(a) Article 50(1) of the Constitution. Order 22 Rule 25 of the Civil Procedure Rules and section 1A, 1B, 3A of the Civil Procedure Act ...” - all of which are inapplicable. The provisions of the Civil Procedure Rules do not govern proceedings and procedure before this Court and their invocation is quite clearly misconceived.”

The applicant has not in the motion invoked/demonstrated and/or cited the right provisions of the law under which the prayer sought is founded being Rule 5(2) (b) of the Court of Appeal Rules.

This court cannot invoke rules on its own and continue to make a finding without its jurisdiction being properly invoked by a party who seeks the court’s intervention. In addition to this, without submissions from the parties or replying affidavit we are unable to determine the application on merit. Accordingly the application is incompetent and is struck out with no order as to costs.

Dated & delivered at Nairobi this 7th day of May, 2021.

W. OUKO, (P)

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JUDGE OF APPEAL

ASIKE-MAKHANDIA

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JUDGE OF APPEAL

S. ole KANTAI

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR