



IN THE COURT OF APPEAL

AT NAIROBI

[CORAM: KARANJA, SICHALE & J. MOHAMMED, J.J.A.]

CIVIL APPLICATION NO. 288 OF 2019

BETWEEN

CATHERINE NJERI NG'ANG'A.....1ST APPLICANT

BETH NYAMBURA KIBIRO.....2ND APPLICANT

SAMUEL CIIRA KIMIRO.....2ND APPLICANT

AND

NANCY WANJIRU NJUGUNA.....RESPONDENT

(An application for stay of execution of the Ruling and Order

of the High Court of Kenya at Nairobi (L. Achode, J) dated 14th

May, 2019 in High Court Succession Cause No. 2462 of 2009

In the Matter of the Estate of Emily Wairimu Chira (deceased))

RULING OF THE COURT

1. UPON perusing the Notice of Motion dated 1st July, 2020 by the applicants, said to be brought under **Rule 5(2)(b), Rule 42 and Rule 47 (1)(2) (3) and (4) of this Court's Rules** wherein the applicants **Catherine Njeri Ng'ang'a, Beth Nyambura Kibiro and Samuel Ciira Kimiro** seek, *inter alia*, an order of stay of execution of the orders of **Achode, J** dated on **14th May, 2019**; and
2. UPON perusing the affidavit of Catherine Njeri Ng'ang'a, the 1st applicant herein sworn on **1st July, 2020** on her own behalf and on behalf of the 2nd and 3rd applicant wherein she has deponed that on **14th May, 2019, Achode, J** estate of their late mother (the deceased) who was the owner of land parcel **Githunguri/Gathangari/2304** (the suit property); that pursuant to the confirmation of grant, the deceased's estate has already been distributed; that the respondent's acts of fraud caused a transfer of 0.20 hectares to be effected in her favour by the deceased pursuant to orders made in Githunguri Senior Principal Magistrate's Court in SPMCC No. 90 of 1997; and
3. UPON perusing a replying affidavit of **Nancy Wanjiru Njuguna**, the respondent herein, sworn on **18th July, 2020** wherein she has deponed that she purchased 0.20 hectares from the deceased who subsequently refused to transfer the 0.20 hectares to her; that she successfully filed Githunguri SPMCC No. 90 of 1997 and had the parcel of land registered in her name; that the applicants obtained grant of letters of administration in respect of the deceased's estate without acknowledging her interest in the suit property; that she successfully moved the court to have the confirmed grant nullified; and
4. HAVING considered the principles that guide this Court in determination of rule 5(2)(b) applications as enunciated in **Stanley Kang'ethe Kinyanjui vs. Tony Keter & 5 Others [2013] eKLR** ; and
5. NOTING that the applicants have to successfully demonstrate the two limbs of the conditions precedent to the grant of an order of stay; and

6. GIVEN that the applicants have not demonstrated that the intended appeal will be rendered nugatory, absent stay, given that the orders of **14th May, 2019** reverted the suit property to the deceased and hence it is not in any danger of being transferred or otherwise; and

7. GIVEN that no prejudice will be occasioned to the applicants, absent stay, we make the following orders:

(i) That the Notice of Motion dated **1st July, 2020** is disallowed;

(ii) The costs of the motion shall be in the intended appeal.

Dated and Delivered at Nairobi this 20th Day of November, 2020.

W. KARANJA

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JUDGE OF APPEAL

F. SICHALE

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JUDGE OF APPEAL

J. MOHAMMED

.....

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR